TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~838.~~ 380

JOSEPH SHIELDS, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED MAY 1, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 638.

JOSEPH SHIELDS, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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1 THE STATE OF OHIO:

At a supreme court of the State of Ohio begun and held at the court-room in the capitol, in the city of Columbus, within and for said State, on Monday, the sixth day of December, in the year of our Lord one thousand eight hundred and seventy-five, before the Hon. George W. McIlvaine, chief-justice, John Welch, William White, George Rex, and William J. Gilmore, judges of said court, among other proceedings were the following, to wit:

JOSEPH SHEILDS, PLAINTIFF IN ERROR, *vs.* THE STATE OF OHIO, DEFENDANT IN ERROR. } Error to the court of common pleas of Lorain County.

Be it remembered that heretofore, to wit, on the 8th day of April, in the year of our Lord one thousand eight hundred and seventy-four, came the said Joseph Sheilds, plaintiff in error, by James Mason and John C. Hale, his attorneys, and filed his application for the allowance of a writ of error, and which application was in the words and figures following, to wit:

2 *Application for writ.*

JOSEPH SHEILDS *vs.* THE STATE OF OHIO.

The plaintiff asks leave to file his petition in error in the supreme court, to reverse the judgment against him in the court of common pleas of Lorain County. The questions presented are of public interest, involving the validity of the act entitled "An act to amend section 13 of an act entitled 'An act to provide for the creation and regulation of incorporated companies in the State of Ohio,' passed May 1st, 1852," passed April 25th, 1873, so far as the same effects railroad companies in the State, organized either under special charter or the general act of February, 1848.

Respectfully,

JAMES MASON and
J. C. HALE,
Attys.

Indorsed on back as follows, to wit: Joseph Sheilds, plff. in err., vs. The State of Ohio. Application for leave to file petition in error.

And on the 8th day of April, in the year of our Lord one thousand eight hundred and seventy-three, aforesaid, said Joseph Sheilds, by James Mason and John C. Hale, his attorneys, filed in the supreme court the following notice, to wit:

Notice.

THE STATE OF OHIO *vs.* JOSEPH SHEILDS.

3 Judgment in com. pleas ct., Lorain County, Ohio, on indictment for assault, &c.

The State will take notice that on Saturday, the 18th inst., the above-named Joseph Sheilds will make application to the supreme court of Ohio for leave to file in his behalf against the State a petition in error,

to reverse the judgment rendered against him in this case. Said motion will be made in open court at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

JAS. MASON & JOHN C. HALE,
Attys. for Sheilds.

APRIL 7, 1874.

I hereby acknowledge service of the above notice by copy this 8th day of April, A. D. 1874.

GEO. P. METCALF,
Prosecuting Attorney of Lorain County, Ohio.

And on the said 8th day of April, in the year of our Lord one thousand eight hundred and seventy-three, the said Joseph Sheilds, plaintiff in error, by James Mason and John C. Hale, his attorneys, also filed in the supreme court a petition in error, which petition in errror is in the words and figures following, to wit:

Petition & assignment of errors.

JOSEPH SHEILDS
vs. } Petition in error.
THE STATE OF OHIO.

In the supreme court of Ohio.

4 The said Joseph Sheilds, plaintiff in error, complains of the said State of Ohio, defendants in error, for that the said State, at the January term of the court of common pleas, A. D. 1874, of and for the county of Lorain, recovered a judgment by the consideration of said court against the said plaintiff in a certain indictment or prosecution then pending in said court, wherein the State of Ohio was plaintiff and the said Joseph Sheilds was defendant, a copy of the record of the judgment and proceedings in which case, duly certified, is hereto attached, marked "A," and made a part of this petition. And the said Joseph Sheilds avers that there is error in the said record and proceedings, in this, to wit:

1st. That the said court erred in the instructions given to the jury.

2nd. That the said judgment was given for the said State when it ought to have been given for said Sheilds, according to the law of the land.

The said Joseph Sheilds, therefore, prays that the said judgment may be reversed and the said plaintiff restored to all things that he has lost by reason thereof.

JAMES MASON & HALE & FAY,
5 *Attys. for Plff. in Error.*

Said petition in error was indorsed on the back thereof as follows:

Joseph Sheilds vs. The State of Ohio. Petition in error. J. Mason, Hale & Fay.

EXHIBIT A.

Exhibit A referred to in petition.

THE STATE OF OHIO,
Lorain County, ss:

Pleas had before the court of common pleas within and for the county and State aforesaid. At a term thereof begun and held at Elyria, in said county, on the twelfth day of January, in the year of our Lord one thou-

sand eight hundred and seventy-three, the following proceedings were had in a certain cause wherein the State of Ohio was plaintiff and Joseph Sheilds, John Doe, and Richard Roe were defendants:

Present, holding said court, Hon. W. W. Boynton, judge thereof.

THE STATE OF OHIO
vs.
JOSEPH SHEILDS, JOHN DOE, RICHARD ROE. } Assault & battery.

Be it remembered that at a term of the court of common pleas begun and held at Elyria, on the twelfth day of January, in the year of
6 our Lord one thousand eight hundred and seventy-four, came the jurors of the grand jury and presented the following bill of indictment against Joseph Sheilds, John Doe, and Richard Roe, to wit:

Indictment.

THE STATE OF OHIO,
Lorain County, ss:

At a term of the court of common pleas begun and holden at the court-house in Elyria, within and for the county of Lorain and State of Ohio, on the twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-four, the jurors of the grand jury, good and lawful men of the county aforesaid, then and there duly returned, empannelled, tried, and sworn, and charged to inquire within and for the body of the county aforesaid, at the term of the court aforesaid, upon their oaths aforesaid, and in the name and by the authority of the State aforesaid, do find and present that Joseph Sheilds, John Doe, and Richard Roe, late of the county of Lorain aforesaid, on the twenty-
7 fifth day of December, in the year of our Lord one thousand eight hundred and seventy-three, at the county of Lorain aforesaid, did unlawfully, violently, and in a menacing manner assault and threaten one Austin Ulrich then and there being, and him, the said Austin Ulrich, then and there did beat, wound, and ill-treat, and other wrongs to the said Austin Ulrich then and there did, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

GEORGE P. METCALF,
Prosecuting Attorney.

Which indictment was indorsed as follows, to wit: The State of Ohio vs. Joseph Sheilds, Richard Roe, and John Doe. Indictment for assault and battery. A true bill. George W. Young, foreman of grand jury. George P. Metcalf, prosecuting attorney. This indictment was found upon testimony sworn and sent to the grand jury at the request of the prosecuting attorney. George W. Young, foreman of the
8 grand jury.

And thereupon an order of arrest was issued as follows, to wit:

Capias.

THE STATE OF OHIO,
Lorain County, ss:

To the sheriff of said county, greeting:

We command you to take Joseph Sheilds, Richard Roe, and John Doe, and them safely keep, so that you have their bodies before the

judge of the court of common pleas at the court-house in Elyria, in said county of Lorain, forthwith, to answer to an indictment for assault & battery; and hereof fail not, and have you then and there this writ.

Witness Wm. N. Briggs, clerk of said court, and the seal thereof, at Elyria, Ohio, this 15th day of January, A. D. 1874.

WM. N. BRIGGS, *Clerk.* [SEAL.]

And afterwards came said sheriff and returned said writ with the following indorsements thereon, to wit:

Return.

THE STATE OF OHIO,
Lorain County, ss:

I have arrested the within-named Joseph Sheilds this 17th day of January, 1874, and have his body now in court. I also, at the same time, delivered to him a true copy of the indictment found against him. John Doe and Richard Roe not found.

R. E. BRAMAN, *Sheriff.*

Fees: service, .90; mileage, .20; attendance, .75; return, .15; total, $2.00.

And at the January term of said court of common pleas, begun and held on the twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-four, present holding said court honorable W. W. Boynton, judge thereof, on the seventeenth day of January, 1874:

This day came George P. Metcalf, who prosecutes for the State in this behalf, and the defendant, Joseph Sheilds, being placed at the bar of the court, and the indictment being read to him, and the court having asked him, "Are you guilty of the offence therein charged, or are you not guilty?" he, for plea thereto, says that he is not guilty in manner and form as he stands charged in said indictment; and thereupon the court ordered that said defendant give bonds in the sum of two hundred dollars for his appearance from day to day during the present term of this court; and thereupon came said Joseph Sheilds with George G. Washburn, his surety, and entered into a recognizance in the sum of two hundred dollars for his appearance from day to day during the present term of this court.

And afterwards, at this term, a jury being called, came, to wit, Wm. H. Root, M. Z. Andrews, A. M. Parmely, Solon H. Rhodes, Casper Dute, T. L. Taylor, Sheldon Paddock, Charles Collins, Thomas Peachey, Stephen Cole, Henry Tyler, and Joseph Gifford, good and lawful men, who being duly impannelled and sworn to well and truly try and true deliverance make between the State of Ohio and the prisoner at the bar, Joseph Sheilds, came and returned into court their written verdict in the words and figures following, to wit:

"We, the jury in this case, being duly impannelled and sworn to well and truly try and true deliverance make between the State of Ohio and the prisoner at the bar, Joseph Sheilds, do find that the prisoner at the bar, Joseph Sheilds, is guilty.

"WM. H. ROOT, *Foreman.*"

And thereupon came said defendant and filed his motion for a new trial in this case; which motion upon consideration the court overruled, to which ruling of the court the defendant excepted, and thereupon presented his bill of exceptions to the rulings of the court in this case,

and prayed the court to allow and sign the same, which was accordingly done in open court and ordered to be made a part of the record in this case. And thereupon, the court having asked said defendant whether he had anything to say why judgment should not be pronounced against him, and said defendant having nothing to say, it is therefore the judgment of the court and the sentence of the law that said defendant, Joseph Sheilds, pay a fine of twenty-five dollars, and also the costs of this prosecution.

Ordered that execution issue to collect said fine and costs.

12 And afterwards, at said term of said court—

J. E.

And now comes said defendant, Joseph Sheilds, and moves the court to suspend the execution of the judgment and sentence in this case, to enable him to apply to the supreme court for a writ of error herein, and the court being fully advised in the premises grant said motion, and order the suspension of said judgment and sentence until the next term of this court. It is further ordered that said defendant give bonds in the sum of two hundred dollars for his appearance on the first day of next term of the court, and from term to term until the cause in error is determined; and thereupon came said Joseph Sheilds with George C. Washburn, his surety, and entered into a recognizance in the sum of two hundred dollars for his appearance on the first day of the next term of this court, and from term to term until the cause in error shall be determined.

13 Motion for new trial filed February 7th, 1874.

Motion for new trial.

THE STATE OF OHIO }
vs.
JOSEPH SHEILDS. }

Court of com. pleas, Lorain Co., Ohio, Jan'y 7, 1874.

And now comes the defendant and moves the court to set aside the verdict and grant him a new trial for the following causes, to wit: 1st. The court erred in its charge to the jury as to the law. 2nd. The verdict was against the evidence and against the law.

J. MASON & HALE & FAY,
Attys. for Deft.

Bill of exceptions.

THE STATE OF OHIO }
vs. } Bill of exceptions. Indictment for assault and battery.
JOSEPH SHEILDS. }

Be it remembered that on the trial of this cause in the court of common pleas within and for the county of Lorain, at the January term, A. D. 1874, the State, to maintain the issue on its part, gave the admission made by the defendant in open court, before the jury, that on the day alleged in the indictment one Austin Ulrich, as alleged therein, took passage on one of the passenger-trains of the Lake Shore and

14 Michigan Southern Railway Company at Elyria, in said county of Lorain, for the city of Cleveland, and on that part of said road chartered as the Junction R. Road, both places being situate on the said railroad; that the said Austin Ulrich, on said train, presented to

defendant Sheilds, the conductor on said train, the sum of seventy-five cents in payment of his fare for a distance of twenty-five miles which he proposed to ride in said cars, being the distance between Elyria and Cleveland; that said Sheilds, who was the conductor of said train, thereupon refused to accept said sum of money in full payment of said fare, but demanded and required said Ulrich to pay for said fare ninety cents; that said Ulrich thereupon refused to pay more than seventy-five cents, or three cents per mile, whereupon said Sheilds required and commanded said Ulrich to leave said train, and, on his refusal
15 so to do, the train having been stopped for that purpose, said conductor, with force, removed him from said car, and, in doing so, with his assistants, who were brakemen on the train, used all necessary force, and no more, to overcome the resistance made by said Ulrich, and ejected him from the train; all done in said county of Lorain.

The defendant admitted the road had been built and in operation over fifteen years.

Whereupon this defendant, to maintain the issue on his part, gave in evidence the rules and rates of fare adopted, prescribed, and required by said railway company for passage for each passenger on its trains between Elyria and Cleveland, and posted up at its depots; and that the defendant was by the rules of the company required to collect that amount, or on refusal of the passenger to pay the same, to cause him to leave the train.

Defendant, to further maintain the issue on his part, gave in evi-
16 dence the charter of the said Lake Shore and Michigan Southern Railway Company, which company owned and operated the railroad on which said cars were being run, and the said train; which charter is as follows, to wit: 1st. An act to incorporate the Junction Railroad Company, passed March 2nd, 1846, contained in Ohio Local Laws, vol. 44, page 284. 2nd. An act to incorporate the Toledo, Norwalk & Cleveland Railroad Company, passed March 7th, 1850; also an act to amend the same, passed January 20th, 1851, contained in vol. 49 of Ohio Local Laws, page 460; an act relating to railroad companies, passed March 3, 1851. 3rd. The records and journals respectively of the Junction Railroad Company, of the Toledo, Norwalk and Cleveland Railroad Company, which prove, as was admitted by the State and defendant before the jury, the consolidation of said two companies into the Cleveland & Toledo Railroad Company, under the power conferred by
17 said act of January 20th, 1851, and the act of March 3, 1851, printed in Exhibit A hereto attached.

The production of said records or proof from the same is waived. The foregoing local acts conferring said charter are contained in the pamphlet containing laws of Ohio relating to the Cleveland & Toledo Railroad Company, and are found on pages thereof Nos. 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, and the same as therein contained are made a part of the bill and attached thereto as Exhibit A.

The defendant further gave in evidence the written agreement of consolidation of the Cleveland & Toledo Railroad Company with the Lake Shore Railway Company, of date April 6th, 1869, which agreement is attached hereto as Exhibit C, and made a part of this bill; and also gave in evidence the agreement in writing of consolidation between the Lake Shore Railway Company and the Michigan Southern and Northern Indiana Railroad Company, thus forming the Lake Shore and
18 Michig. Southern Railway Company; which agreement, marked "D," hereto attached as an exhibit, is made a part of this bill.

And no other or further evidence was given by either party; and thereupon after argument the court charged the jury as follows:

Charge to jury.

That the acts of the legislature offered in evidence considered in connection with the act of Feb'y 11, 1848, made part of the charter of the Toledo, Norwalk & Cleveland R. R. Co., subjected the Cleveland & Toledo R. R. Co., when formed from said consolidation, to all the restrictions in said acts, and that the Junction R. R. charter reserved to the State the power to fix or reduce the fare on said road after the lapse of ten years, if deemed to' high, and that said Cleveland & Toledo Co. had not power uncontrollable by the legislature to fix such rates of fare as it deemed reasonable, by reason of the power conferred by the 11th section of Junction R. R. charter after ten years had elapsed from the building of said road. The court also charged the jury
that the legal effect of the consolidation of the Cleveland &
19 Toledo Co. with the Lake Shore Ry. Co. and the consolidation of the Lake Shore Railway Co. with the Michigan Southern & Northern Indiana R. R. Co., forming the present Lake Shore & Michigan Southern Ry. Co., under said articles of agreement and the laws of the State, was to create a new corporation under the general laws of the State enacted under the present constitution, and that the legislature could not by such laws constitutionally authorize the transfer from the old companies to the new of franchises and privileges which it could not confer upon the new company by general laws; that under the present constitution the legislature could not confer on a R. R. Co. the right to fix rates of fare not subject to reduction or regulation by law, and that therefore the Lake Shore and Michigan Southern Ry. Co. could not
under its existing organization avail itself in any manner of the
20 powers conferred on the Junction Company, by the 11th sec. of its charter, to fix such rates of fare as the company deemed reasonable. That the act of April 25th, 1873, limiting the right of the R. R. Cos. to three cents a mile for distances of over eight miles was applicable to the L. S. & M. S. Ry. Co., and their duty would be discharged by returning a verdict of guilty against the defendant.

To which charge of the court the defendant excepted at the time, and thereupon after verdict the defendant moved the court to set the same aside, and grant a new trial for reasons in the motion set forth, which motion was overruled by the court; to which the defendant excepted and prayed the court to sign and seal this his bill of exceptions in that behalf, which is done accordingly, and ordered to be made a part of the record in this case.

W. W. BOYNTON, *Judge.* [SEAL.]

EXHIBIT A.

Exhibit A.—Consolidation.

An act relating to railroad companies:

Continuous lines of railroad may consolidate.

21 SEC. 1. Be it enacted by the general assembly of the State of Ohio, That whenever the lines of any railroad companies in this State, or any portion of such lines, have been or may be constructed so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break or interruption, such

companies are hereby authorized to consolidate themselves into a single corporation, in the manner following:

I. The directors of said two or more corporations may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, (which shall not exceed thirteen;) the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; the manner of compensating stockholders in each of said two or
22 more corporations who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights, and franchises conferred upon such two or more corporations by the several acts incorporating the same, or relating thereto, respectively, and shall be subject to all the restrictions and perform all the duties imposed by such acts, so far as the same may be consistent with the provisions of this act: Provided, that all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation shall be paid at least par value for each of the shares so held by them, if they shall so require, previous to said consolidation being consum'atted.

23 II. Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of said corporations separately, at a meeting thereof to be called upon a notice of at least thirty days, specifying the time and place of such meeting and the object thereof, to be addressed to each of such stockholders, when their place of residence is known, and deposited in the post-office, and published for at least three successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal office of business, and has been sanctioned by such stockholders by the vote at least two-thirds in amount of the stockholders present at such meeting, voting by ballot, in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote; and when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders separately,
24 after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

CERTIFICATES OF CONSOLIDATION FILED.

SEC. 2. Upon making the agreement mentioned in the preceding section in the manner required therein, and filing a duplicate or counterpart thereof in the office of the secretary of state, the said two or more corporations mentioned or referred to in said first section shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein.

RIGHTS, FRANCHISES, ETC., TRANSFERRED TO AND VESTED NEW CORPORATION.

SEC. 3. Upon the election of the first board of directors of the corporation created by the agreement in the first section of this act mentioned

and by the provisions of this act, all and singular the rights and
25 privileges of each and all of said two or more corporations, parties to such agreement, all and singular their rights and interests in and to every species of property, real, personal, and mixed, and things in action, shall be deemed to be transferred to and vested in such new corporation without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the rights of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporations; and the titles and the real estate acquired by either of said two or more corporations shall not be deemed to revert or be impaired by means of anything in this act contained: Provided, that all rights of creditors, and all liens upon the property of either of said corporations, parties to said agreement, shall be and hereby are pre-
26 served unimpaired; and the respective corporations shall continue to exist, so far as may be necessary to enforce the same: And provided further, that all the debts, liabilities, and duties of either company shall thenceforth attach to such new corporation, and be enforced from the same to the same extent and in the same manner as if such debts, liabilities, and duties had be' originally conferred by it.

RAILROAD COMPANIES MAY AT ANY TIME AID EACH OTHER WITH A VIEW OF CONSOLIDATING.

SEC. 4. Any railroad company heretofore or hereafter incorporated may, at any time, by means of subscription to the capital stock of any other company or otherwise, aid such company in the construction of its railroad, for the purpose of forming a connected of said last-mentioned road with the road owned by the company furnishing said aid, or any railroad company organized in pursuance of law may
27 lease or purchase any part or all of any railroad constructed by any other company, if said companies' lines of road are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said companies respectively, or any two or more railroad companies where lines are so connected may enter into any arrangement for their common benefit, consistant with and calculated to promote the objects for which they were created: Provided, that no such aid shall be furnished, nor any such purchase, lease, or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof at such time and place and in such manner as they shall designate, and the holders of at least two-thirds of the stock of such company represented at such meeting in person or by proxy, and voting thereat, shall have assented thereto.

HOW CONTRACTS BETWEEN COMPANIES MAY BE ENFORCED.

28 SEC. 5. All contracts between railroad companies under the provisions of this act may be enforced by a decree of the supreme court in a suit in chancery brought for that purpose; and any two judges of said court in vacation may, after hearing, make any provisional order or decree in such suit which may be necessary to enforce such contracts, to be in force until the next session of said court, in the proper county.

DIRECTORS MAY NEGOTIATE BONDS.

SEC. 6. The directors of any railroad company are hereby authorized to sell or negotiate the bonds or notes issued by said company, or re-

ceived by it in payment of subscription to its capital stock or otherwise, at such time and at such places, either within or without this State, and at such rates as in their opinion will best advance the inter-
29 ests of such company; and if such bonds or notes are thus sold at a discount, such sale shall be as valid in every respect as if sold at their par value.

Passed March 3, 1851.

Junction Railroad charter.

An act to incorporate the Junction Railroad Company.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, That Herman Ely, Artemas Beebe, Eber W. Hubbard, Seymour W. Baldwin, Albert A. Bliss, Horace A. Kendall, of the county of Lorain, Benjamin Benson, George C. Baker, Platt Benedict, and Frederick S. Chapman, of the county of Huron, John Fuller, George W. Choate, D. Hamilton, Foster M. Follett, and Burr Higgins, of the county of Erie; R. P. Buckland, Jesse S. Olmsted, of the county of Sandusky, and those who may hereafter become stockholders in the manner hereinafter prescribed, their successors and assigns, be, and they are hereby, created a body-corporate by the name and style of the Junction Railroad
30 Company, with perpetual succession, and by that name and style shall be, and hereby are, made capable in law to have, purchase, receive, possess, sell, convey, and enjoy real and personal estate, and retain to them, their successors and assigns, all such lands, tenements, and hereditaments as shall be actually necessary for their accommodation and convenience in the transaction of their business, to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended in courts of record and elsewhere; and also to have and use a common seal, and the same to alter, break, renew, or change at pleasure.

SEC. 2. The said corporation are hereby vested with the right and authority to construct a railroad commencing at such point on the
31 Cleveland, Columbus and Cincinnati Railroad as the directors may select, either in the county of Cuyahoga or Lorain, and within 30 miles from Cleveland; thence to Elyria, in Lorain County, unless the junction with the Cleveland and Columbus Road should be made at Elyria; and from thence on the most feasible route to intercept the Mad River and Lake Erie Railroad at Bellevue, or at such other point as the directors shall choose, and thence to Lower Sandusky, in Sandusky County; and the said corporation shall have power to construct the said railroad, or a branch of the same, from Elyria to Sandusky City, in Erie County, and from thence to Lower Sandusky; and also if the directors of said company and the directors of the Cleveland, Columbus and Cincinnati Railroad Company cannot agree upon the terms of junction with said Cleveland, Columbus and Cincinnati Railroad Company, then in that case, the railroad shall commence at the city
32 of Cleveland, Cuyahoga County, or the directors of the respective companies may agree that the terms of a junction between the two companies may be decided by the supreme court.

SECT. 3. That the capital stock of said company shall be one million of dollars, and shall be divided into shares of fifty dollars each.

SEC. 4. That the above-named persons, or any two of them, are authorized to open books for receiving subscriptions to the capital stock of said corporation, to be opened at such time or times, and at such

place or places, as they may deem expedient, under the direction of not less than three of the persons named as aforesaid, having given not less than ten days' previous notice, in a newspaper published in the county where books of subscription are to be opened, of the time and place of opening said books; and as soon as twenty thousand dollars of
33 said stock shall be subscribed, they may give a like notice of the meeting of stockholders, to meet at such time and place as they may designate, to choose directors, to continue in office for the term of one year, and until others are duly appointed in their stead. At the time and place appointed, thirteen directors shall be chosen, by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies; each share of the capital stock shall entitle the owner to one vote; the persons named in the first section of this act, or such of them as may be present, shall be inspectors of such election, and shall certify under their hands what persons are elected directors and appoint the time and place for holding the first meeting of *of* directors; seven directors shall form a board, and be competent to transact all business of the corporation; a new
34 election of directors shall be made annually at such time and place as the stockholders, at their first meeting shall appoint, or as the laws of the corporation may require; and the directors chosen at any election shall, as soon thereafter as may be convenient, choose out of their number one person to be president, and one to be treasurer of the corporation.

SEC. 5. That, upon every subscription, there shall be paid at the time of subscribing, to the person authorized to open said books, the sum of five dollars upon every share subscribed, or the same may be secured to be paid when called for by the directors, at the option of the person receiving said subscription, and the residue thereof shall be paid in such installments, and at such times as may be required by the president and directors of said company, to the treasurer thereof, and the said company are authorized to take and receive from such persons as
35 shall purchase such stock such bonds and notes for the residue of the purchase-money of such stock as they may deem expedient.

SEC. 6. That if the said railroad company shall not be organized within five years from the date of the passage of this law, and not less than twenty miles of the road be completed within ten years from the commencement of the work, then this act shall be null and void.

SEC. 7. That the directors shall have power to determine the number and kind of tracks, turnouts, branches, carriages, conveyances, storehouses, depots, and other fixtures and machinery; prescribe the mode of transportation, and have power to construct a single or double-track railroad.

SEC. 8. That said company shall have a right to enter upon any land to survey and lay down said road and to take any materials, ex-
36 cept timber, upon the conditions hereinafter specified, necessary for the construction or repair of said work; and whenever any lands or materials shall be taken for the construction of said work, and the same shall not be given or granted to said company, and the owners thereof do not agree with said company as to the compensation to be paid therefor, or in case the owner or owners are under any disability to contract, or are absent from the State, application may be made by the said company to any judge of the court of common pleas of the county in which such lands or materials may be, and thereupon it shall be the duty of such judge to issue his warrant to the sheriff of said

ceived by it in payment of subscription to its capital stock or otherwise, at such time and at such places, either within or without this State, and at such rates as in their opinion will best advance the interests of such company; and if such bonds or notes are thus sold at a discount, such sale shall be as valid in every respect as if sold at their par value.

Passed March 3, 1851.

Junction Railroad charter.

An act to incorporate the Junction Railroad Company.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, That Herman Ely, Artemas Beebe, Eber W. Hubbard, Seymour W. Baldwin, Albert A. Bliss, Horace A. Kendall, of the county of Lorain, Benjamin Benson, George C. Baker, Platt Benedict, and Frederick S. Chapman, of the county of Huron, John Fuller, George W. Choate, D. Hamilton, Foster M. Follett, and Burr Higgins, of the county of Erie; R. P. Buckland, Jesse S. Olmsted, of the county of Sandusky, and those who may hereafter become stockholders in the manner hereinafter prescribed, their successors and assigns, be, and they are hereby, created a body-corporate by the name and style of the Junction Railroad Company, with perpetual succession, and by that name and style shall be, and hereby are, made capable in law to have, purchase, receive, possess, sell, convey, and enjoy real and personal estate, and retain to them, their successors and assigns, all such lands, tenements, and hereditaments as shall be actually necessary for their accommodation and convenience in the transaction of their business, to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended in courts of record and elsewhere; and also to have and use a common seal, and the same to alter, break, renew, or change at pleasure.

SEC. 2. The said corporation are hereby vested with the right and authority to construct a railroad commencing at such point on the Cleveland, Columbus and Cincinnati Railroad as the directors may select, either in the county of Cuyahoga or Lorain, and within 30 miles from Cleveland; thence to Elyria, in Lorain County, unless the junction with the Cleveland and Columbus Road should be made at Elyria; and from thence on the most feasible route to intercept the Mad River and Lake Erie Railroad at Bellevue, or at such other point as the directors shall choose, and thence to Lower Sandusky, in Sandusky County; and the said corporation shall have power to construct the said railroad, or a branch of the same, from Elyria to Sandusky City, in Erie County, and from thence to Lower Sandusky; and also if the directors of said company and the directors of the Cleveland, Columbus and Cincinnati Railroad Company cannot agree upon the terms of junction with said Cleveland, Columbus and Cincinnati Railroad Company, then in that case, the railroad shall commence at the city of Cleveland, Cuyahoga County, or the directors of the respective companies may agree that the terms of a junction between the two companies may be decided by the supreme court.

SECT. 3. That the capital stock of said company shall be one million of dollars, and shall be divided into shares of fifty dollars each.

SEC. 4. That the above-named persons, or any two of them, are authorized to open books for receiving subscriptions to the capital stock of said corporation, to be opened at such time or times, and at such

place or places, as they may deem expedient, under the direction of not less than three of the persons named as aforesaid, having given not less than ten days' previous notice, in a newspaper published in the county where books of subscription are to be opened, of the time and place of opening said books; and as soon as twenty thousand dollars of
33 said stock shall be subscribed, they may give a like notice of the meeting of stockholders, to meet at such time and place as they may designate, to choose directors, to continue in office for the term of one year, and until others are duly appointed in their stead. At the time and place appointed, thirteen directors shall be chosen, by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies; each share of the capital stock shall entitle the owner to one vote; the persons named in the first section of this act, or such of them as may be present, shall be inspectors of such election, and shall certify under their hands what persons are elected directors and appoint the time and place for holding the first meeting of *of* directors; seven directors shall form a board, and be competent to transact all business of the corporation; a new
34 election of directors shall be made annually at such time and place as the stockholders, at their first meeting shall appoint, or as the laws of the corporation may require; and the directors chosen at any election shall, as soon thereafter as may be convenient, choose out of their number one person to be president, and one to be treasurer of the corporation.

SEC. 5. That, upon every subscription, there shall be paid at the time of subscribing, to the person authorized to open said books, the sum of five dollars upon every share subscribed, or the same may be secured to be paid when called for by the directors, at the option of the person receiving said subscription, and the residue thereof shall be paid in such installments, and at such times as may be required by the president and directors of said company, to the treasurer thereof, and the said company are authorized to take and receive from such persons as
35 shall purchase such stock such bonds and notes for the residue of the purchase-money of such stock as they may deem expedient.

SEC. 6. That if the said railroad company shall not be organized within five years from the date of the passage of this law, and not less than twenty miles of the road be completed within ten years from the commencement of the work, then this act shall be null and void.

SEC. 7. That the directors shall have power to determine the number and kind of tracks, turnouts, branches, carriages, conveyances, storehouses, depots, and other fixtures and machinery; prescribe the mode of transportation, and have power to construct a single or double-track railroad.

SEC. 8. That said company shall have a right to enter upon any land to survey and lay down said road and to take any materials, except timber, upon the conditions hereinafter specified, necessary
36 for the construction or repair of said work; and whenever any lands or materials shall be taken for the construction of said work, and the same shall not be given or granted to said company, and the owners thereof do not agree with said company as to the compensation to be paid therefor, or in case the owner or owners are under any disability to contract, or are absent from the State, application may be made by the said company to any judge of the court of common pleas of the county in which such lands or materials may be, and thereupon it shall be the duty of such judge to issue his warrant to the sheriff of said

county, commanding him to summon three disinterested freeholders to arbitrate upon the compensation to be awarded to such person or persons, who shall be sworn and paid as in other cases; and they or a majority
37 of them shall award as arbitrators between the two parties, and render copies of their award to each of the parties in writing, from which award either party may appeal to the court of common pleas for the county in which such land and materials may have been situated; and in all cases where compensation shall in any manner be claimed, it shall be the duty of the arbitrators and the court to estimate and set off any advantage which the location and construction of said road may be to the claimant; and said company shall have the right to retain, own, hold, and possess said materials, upon first paying or tendering to the owner or owners thereof a reasonable compensation in money for the same, and to the use and occupation of said lands as fully and absolutely as if the same had been granted and conveyed to said com-
38 pany by deed: Provided, That before the said company shall enter upon any land for the purpose of constructing the said road they shall pay or secure to the owner of such lands, payment for the same as may be awarded by the provisions of this section.

SEC. 9. That if it shall be necessary, in the selection of the route or construction of the road, to construct the same with, or to use any road, street, or bridge made or erected by any company or persons incorporated or authorized by any law of this State, it shall be lawful for the said company, and it is hereby authorized, to contract and agree with any such other corporation or person for the right to use such road, street, or bridge, or for the transfer of any of the corporate or other rights and privileges of such corporation or persons, to the said president
39 and directors of this corporation, and all such other corporations or persons incorporated by or acting under the laws of this State are hereby authorized to make such an agreement, contract, or transfer by and through the agency of their corporate officers, or by such persons as by any law of this State are intrusted with the direction and management of such road, street, or bridge; and every contract to *to* transfer made in pursuance of the authority hereby granted, when executed by the several parties, under their respective corporate seals, or otherwise legally authenticated, shall vest in this corporation all the rights and privileges vested in said corporation or persons as shall be specified in the contract and agreement above referred to.

SEC. 10. Whenever it shall be necessary for the construction of the railroad to intersect or cross any stream of water or water-course,
40 or any railroad or highway lying in or across the route of said road, it shall be lawful for the corporation to construct the said railway across or upon the same; but the corporation shall restore the stream or water-course, road or highway thus intersected to its former state, or place it in such condition as not to impair its former usefulness; and if said corporation, after having selected a route for said railway, find any obstacle in continuing said location, either by the difficulty of construction or procuring the right of way at a reasonable cost, or whenever a better and cheaper route can be had, it shall have authority to vary the route and change the location.

SEC. 11. That said corporation may demand and receive from all persons travelling upon said road, or for the transportation of property, such rates of toll as the corporation may think reasonable, which
41 rates they shall have posted up in some public place at each of their depots.

SEC. 12. That at a regular annual meeting of the stockholders of said

company it shall be the duty of the president and directors in office for the previous year to exhibit a clear and distinct statement of the affairs of the company, and the president and directors shall annually or semi-annually declare and make a true dividend of the net profits arising from the revenues of the company, deducting the necessary and probable contingent expenses, and that they shall divide the same among the stockholders of said company in proportion to their respective shares.

SEC. 13. That every president, director, treasurer, and secretary of said company, before he acts as such, shall swear or affirm, as the case may be, that he will well and truly discharge the duties of said office to the best of his skill and judgment; and the arbitrators author-
42 ized by the eighth section of this act, before they proceed to estimate damages, shall severally take an oath or affirmation faithfully, impartially, and honestly to discharge their duty; and the said appraisers shall severally receive for their services one dollar per day for every day they may necessarily be employed, which shall be paid by said corporation.

SEC. 14. The said president and directors, or a majority of them, may appoint all such officers, engineers, agents, or servants whatsoever as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure; that they, or a majority of them, shall have the power to determine by contract the compensation of the engineers, officers, agents, or servants in the employ of said company, and to determine by their by-laws the man-
43 ner of adjusting and settling all accounts against the said company, and also the manner and evidence of transfer of stock in said company; and they, or a majority of them, shall have power to pass by-laws which they may deem necessary or proper for exercising all the powers vesting in the company hereby incorporated, and for carrying the objects of this act into effect: Provided only, That such by-laws shall not be contrary to the laws of this State or of the United States.

SEC. 15. That if any person shall willfully, by any means whatsoever, injure, impair, or destroy and part of said railroad constructed by said company under this act, or any of the necessary works, buildings, cars, or machinery of the said company, such person or persons so offending shall each of them, for every such offense, forfeit and pay to
44 the said company, by an action of debt, with costs of suit, in any court having cognizance thereof, and shall also be subject to an indictment in the court of common pleas of the county where such offense may be committed, and upon conviction of such offense shall be punished by fine not exceeding five hundred dollars, and imprisonment in the jail of said county not exceeding ten days.

SEC. 16. That said corporation shall have power to locate and construct branched roads from the main route to other towns or places in the several counties through which said road may pass.

SEC. 17. That this company may, and they are hereby authorized to, commence, complete, and put in operation, any part of said road or any branch thereof aforesaid, at any point on the route of said rail-
45 road, which the interests of the company may require to be first commenced and completed, and that the said company may demand and receive the same rate of toll and transportation, and all the benefits that would accrue to each division so commenced and completed and put in operation as aforesaid.

SEC. 18. If the instalments remain unpaid for sixty days after the time of payment has elapsed, the directors in the name of the company

may collect the same by suit, or may sell the stock at public auction for the instalments then due, giving twenty days' notice of the time and place of sale, by advertisement in some newspaper of general circulation in the county where such sale is to be made, and the residue of the money arising from such sale, after paying such instalments and costs, shall be paid over to the former owner.

SEC. 19. That it shall be the duty of the directors to keep open
46 books of subscription at the office of the company until the number of shares authorized by this act shall be subscribed.

SEC. 20. That said company shall not contract debts or liabilities to a greater amount than the stock subscribed and held by responsible stockholders, remaining unexpended, together with the means on hand, and that which may be reasonably expected to accrue within three years from the time of making such contract, be informed of such want of means on the part of such company, and by agreement in writing specyfying the time and manner in which such debt shall be paid.

SEC. 21. The governor shall have the power to prescribe what price may be charged by said company for the transportation of the public mails of the United States and the troops and munitions of war belonging to this State, and the United States, should the board of
47 public works at any time entertain the opinion that the prices charged therefor by such company are unreasonably high, but such power shall not extend so far as to control the time or times of the arrival or departure of the cars on said road, or in any other manner interfere with the regulations of such company.

SEC. 22. After the lapse of ten years from the completion of said road, the State shall have the power to reduce the tolls upon said road, should they be unreasonably high, and exercise the same power at intervals of every ten years thereafter.

SEC. 23. At any time after ten years from the completion of said railroad, the said company shall be liable to pay to the State, upon such property transported on said road through the line during the season of canal navigation in this State, as the board of public
48 works, by whatever designation it may be known, shall be of the opinion would have been transported on the Ohio Canal but for the existance of said road, such tolls as shall be equal to one-half the tolls charged by the State at that time on like property transported on the Ohio Canal.

SEC. 24. If the company shall be dissatisfied with the opinion of the board of public works, as to the amount of property which but for the said road would have been transported on the Ohio Canal, they may review the same by instituting proceedings in the supreme court of Franklin County as in chancery, making the State and the board of public works parties thereto, and the said court may make such order and decrees therein as they shall deem proper to accomplish the objects of the section next above.

Passed March 2nd, 1846.

49 *T., N. & C. R. R. charter.*

An act to incorporate the Toledo, Norwalk and Cleveland Railroad Company.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, That Timothy Baker, Charles S. Boult, John R. Osborn, George G. Baker, John Gardner, and James Hamilton, jr., of the county of Huron, Frederick Chapman, S. L. Rawson, L. B. Otis, H. Everett, A. B. Tay-

lor, R. P. Buckland, of the county of Sandusky; and Hezekiah D. Mason, Edward Bissell, Daniel O. Morton, J. W. Bradbury, and John Fitch, of the county of Lucas, and their associates, successors, and assigns, be, and they are hereby, created a body corporate and politic, by the name and style of the Toledo, Norwalk and Cleveland Railroad Company, with perpetual succession, and by that name and style shall be entitled to have and enjoy, and are hereby invested with, all the rights, privileges, and franchises, and be subject to all the restrictions of an act entitled "An act regulating railroad companies," passed February 11, 1848, and the act amendatory thereto, except so far as the same may be modified by this act.

SEC. 2. The capital stock of said company shall be two millions of dollars, and said company shall have power to construct a railroad from Toledo, in the county of Lucas, by the way of Norwalk, in Huron County, so as to connect with the Cleveland, Columbus and Cincinnati Railroad at Wellington, in Lorain County, or at some other point in said counties of Huron and Lorain, to be determined by the directors of said company.

SEC. 3. The county commissioners of any county through which said railroad (in whole or in part) be located, shall be, and they are hereby, authorized to subscribe to the capital stock of said company any sum of money not exceeding one hundred thousand dollars, and to pay the same they shall have power to borrow any sum not exceeding the amount so subscribed, at any rate of interest not exceeding seven per cent. per annum, payable semi-annually in advance; and for the final payment of the principal and interest of said sum so subscribed or borrowed to make, execute, and deliver such bonds, notes, and instruments of writing as may be necessary or proper to secure the payment of the money so subscribed or borrowed, and levy and collect annually such taxes, together with the profits, dividends, or tolls arising from said stock will pay at such time or times as may be agreed upon said money so subscribed or borrowed, with the interest thereon, and the incidental charges.

SEC. 4. No subscription shall be made by the county commissioners of any county aforesaid until a vote of the qualified voters of such county has been had in favor of such subscription in the manner pointed out in an act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike-roads, or other incorporated companies in this State, passed February twenty-eight, eighteen hundred and forty-six.

SEC. 5. Said company shall be and is hereby authorized to connect with any other railroad company, and to consolidate its capital stock with the capital stock of any such company, and to have and use the name and style of any such other company, and constitute a part of the same.

Passed March 7, 1850.

Amendment to T., N. & C. charter.

An act to amend the act entitled "An act to incorporate the Toledo, Norwalk and Cleveland Railroad Company."

SEC. 1. Be it enacted by the general assembly of the State of Ohio, That the Toledo, Norwalk and Cleveland Railroad Company is hereby authorized to connect their road with the Cleveland, Columbus and Cin-

cinnati Railroad at any point upon the same, in the counties of Huron, Lorain, or Cuyahoga, and shall have power to extend their road to the city of Cleveland, with or without making such connection, either by agreement with the Cleveland, Columbus and Cincinnati Railroad Company along their line, or by an independant line: Provided, that the making such connection or extension in either mode above specified shall not preclude said company from afterwards adopting the other whenever the directors shall so determine, and said company is hereby authorized to lease their road to any railroad company with which it may connect, or having a common terminus with it, and shall also have power to alter the *guage* of their road so as to conform to that of any other railroad having such common terminus, or may become the lessee of any such railroad with it, or any portion thereof, of its depots, stations, or other railroad accommodations, and the said company is authorized to transport its passengers and freight across any navigable river on the line of its road, by a ferry or otherwise; provided said company shall not thereby obstruct or hinder the navigation of such river.

SEC. 2. The commissioners of Sandusky County are authorized to subscribe to the capital stock of said company, in behalf of said county, excepting the townships of Townsend and Woodville, any sum not exceeding the sum of seventy-five thousand dollars. And the commissioners of Huron County are also authorized to subscribe to said stock, for and in behalf of the five townships which compose the north range in said county, jointly, any sum not exceeding fifty thousand dollars, the sum to be so subscribed to be stated in the notices of election herein provided for; and for the purpose of providing for the payment of said stock, and the interest upon the securities that may be issued for the same, the said commissioners, respectively, shall have the like powers as are granted, and perform the like duties as are contemplated, in the 3rd and 4th sections of the act to which this is an amendment.

SEC. 3. The vote of the qualified electors of Sandusky County, with the exceptions above mentioned, and of the said five townships comprising the north range in Huron County, in reference to said subscription, may be taken at any annual spring or fall election, upon twenty days' notice to be given for that purpose in the manner provided in the act passed February 28, A. D. 1846, referred to in the 4th section of the act to which this is an amendment; and said election shall be held and conducted in like manner as election for State and county officers; and the judges shall make return of the same to the clerk of the proper county in the same way and within like time as the votes for State and county officers are required to be returned; and the said clerk shall forthwith certify the result of the same to the auditor of his county.

SEC. 4. In case a majority of the votes so cast shall be in favor of said subscription, the commissioners of the proper county shall subscribe to said company the amount of stock so voted, and to pay the same may issue their bonds to said company as hereinafter provided, or may, and they are hereby empowered to, borrow money not exceeding in amount the sum so subscribed, at a rate of interest not exceeding seven per cent. per annum, payable semi-annually in advance, in the city of New York, upon the credit of the portions of said counties, respectively so authorizing such subscription. And for the first payment of the principal and interest of said sum so subscribed or borrowed to make, execute, and deliver such bonds, notes, and instruments in writing as

may be necessary or proper to secure the payment of the money so subscribed or borrowed, and to levy annually upon said portions of said counties, and collect through the treasurer of the proper
58 county such taxes, together with the profits, dividends, or tolls arising from said stock will pay at such time or times as may be agreed upon said money so subscribed or borrowed, with the interest thereon, and the incidental expenses and charges.

SEC. 5. The commissioners of said counties, respectively, shall be the trustees of said stock, with power to sell the same upon a majority vote therefor of the portions of said counties interested therein, and to create a sinking-fund for the final payment of the bonds that may be issued therefor out of the dividends or profits that may accrue therefrom; and said stock shall, in equity, belong to the several townships on the credit of which the same may be subscribed in proportion to the amount of taxable property in such townships for the year 1850; and all
59 moneys collected by taxation for incidental charges and the payment of the interest or principal of any bonds that may be issued, and all profits and dividends upon said stock, shall be paid to said commissioners, to be by them disbursed to the parties or persons entitled thereto, or to be invested as in this section contemplated.

SEC. 6. The trustees of any township in or through which said railroad is authorized to be constructed are hereby authorized and required, with the consent of the electors in said township, to be obtained as herein provided, to subscribe to the capital stock of said company any sum not less than two or more than five per cent. upon the taxable property of such township, as the same appears upon the duplicate of the county in which said township is situate, for the year 1850, the sum to be so subscribed to be stated in the notices to be given of the election.

SEC. 7. No subscription shall be made as aforesaid without
60 the assent of the electors of such township, to be obtained as follows: The trustees of such township shall give at least ten days' notice previous to any annual election in such townships that a vote will be taken at such election on the question of making such subscription, which notice shall be posted in five of the most public places in such township, and the qualified voters of each township shall vote, by ballot, "For subscription" or "Against subscription."

SEC. 8. The judges of election in such township, within two days from holding the same, shall transmit certified returns of said vote to the auditor of the proper county, and if it shall appear that a majority of said votes shall be in favor of such subscription, the same shall be made as aforesaid by said trustees in behalf of said townships.

61 SEC. 9. For the payment of such subscriptions the trustees of such township shall have power to borrow any sum of money not exceeding the amount so subscribed, at a rate of interest not exceeding seven per cent., payable semi-annually, in the city of New York, in advance; and for the final payment of such subscription or loan, may make and deliver such bonds, orders, or other evidence of indebtedness as may be necessary and proper to secure the payment of such subscription or loan, and shall levy and collect annually such taxes as, together with the dividends and profits arising from said stock, will pay, at such time or times as may be agreed upon, the full amount of such subscription or loan, with the interest thereon, and incidental charges.

SEC. 10. All taxes to be levied by said trustees under this
62 act, shall be by them certified to the auditor of the county, and by him be placed on the county duplicate, and assessed against

the proper township in the same manner as State and county taxes, and shall be collected by the county treasurer in the same manner as such taxes, and by said treasurer shall be paid out on the order of said trustees of the townships entitled to the same for the purposes in the last section mentioned and for no other.

SEC. 11. Whenever the bonds, orders, or other evidences of indebtedness, issued by any township under this act, or the interest thereon, shall not be promptly paid when due, the county auditor of the proper county, upon the application of any creditor to whom the arrears of such principal or interest shall be due, shall assess the amount of the same upon such township.

63 SEC. 12. In case said company shall connect with and consolidate its stock with any other railroad company, as provided in the fifth section of the act to which this is an amendment, said companies, when so consolidated, may assume the corporate name and style of the Cleveland and Toledo Railroad Company, or *if* either of the original companies, as may be mutually agreed upon by the board of directors; and in the event of such consolidation, the affairs of such consolidated company so to be constituted, till the time of the next annual election thereafter of the Toledo, Norwalk and Cleveland Railroad Company, shall be managed by an executive committee of three persons, to be appointed by the respective boards of directors; and afterwards the affairs of such consolidated company shall be managed by a board of seven directors to be elected and qualified in the manner pro-

64 vided in the act to which this is an amendment. And all the provisions of this act, with reference to subscriptions of stock and otherwise, shall apply to such company so to be constituted in the like manner and to the like extent as the same were intended to and would apply to the Toledo, Norwalk and Cleveland Railroad Company. And in case the railroad company with which the Toledo, Norwalk and Cleveland Railroad Company shall consolidate its stock, shall be the Junction Railroad Company, incorporated by an act of the legislature passed March 2nd, 1846, sections 9, 10, 11, 15, and 17 of the act last aforesaid, shall continue to be and form a part of the law by which said consolidated company shall be governed, but in other respects said consolidated company shall be governed by the

65 laws applicable to the Toledo, Norwalk and Cleveland Railroad Company and the acts amendatory thereto; and in case of consolidation with said Junction Railroad Company as aforesaid, the consolidated company may and they are hereby authorized, if the directors so determine, to construct two roads for any portion of the distance between Toledo and Cleveland, uniting the lines at such points on the route as the directors of said consolidated company may determine upon, and in that case the foregoing provisions shall apply to both diverging lines as well as to the common line.

SEC. 13. The provisions of the act passed January 31, 1850, respecting the sale of bonds of the Columbus and Lake Erie Railroad Company and of the Central Ohio Railroad Company are hereby extended to the bonds of the Toledo, Norwalk and Cleveland Railroad Company and to those of any other railroad company that may consolidate

66 its stock therewith, or to those of the company that may be formed by such consolidation, and *to* any bonds that may be issued by virtue of this act shall be taken in evidence in all courts of law and equity, that all preliminary conditions have been complied with.

SEC. 14. Jurisdiction is hereby conferred upon the supreme court to enforce by decree any agreement of consolidation, or for leasing, or for

other accommodations made between any companies as contemplated in this act.

Passed January 20, 1851.

EXHIBIT C.

Articles of agreement made and entered into this eleventh day of February, A. D. 1869, by and between The Cleveland and Toledo Railroad Co. and The Lake Shore Railway Co.

That whereas the railroads respectively owned by the above-named companies have been constructed so as to admit the passage
67 of burden or passenger cars over them continuously, without break or interruption from the western terminus of the said railroad of the said Cleveland and Toledo Company, which is at the city of Toledo, in the State of Ohio, to the eastern terminus of the said railroad of the said Lake-Shore Company, which is in the city of Erie in the State of Pennsylvania; and the directors of the respective companies have determined that the interests of the respective stockholders of said companies and the public interests and convenience will be promoted by the union of said railroads into one, and by the consolidations of the respective stocks of said companies into one common consolidated stock.

And whereas the said companies are authorized by the laws of Ohio, and especially by the act of the legislature of said State passed
68 March 3d, A. D. 1851, to effect such consolidation, and have by and through their respective boards of directors agreed so to do, upon the terms and conditions hereinafter mentioned and contained:

Now, therefore, this agreement, made by and between the corporations above named, under and by virtue of legal authority so to do, and which is expressly conferred by the above-named act of the legislature of Ohio, witnesseth, that the said Cleveland and Toledo Railroad Company, and the said Lake Shore Railway Company do agree, each with the other, that the said companies shall be consolidated into and form one corporation, which shall have for its name and style "The Lake Shore Railroad Company;" and in pursuance of the said act of the legislature of Ohio, the said parties hereto do hereby prescribe the
69 following terms and conditions of and for the said consolidation, and do respectively agree thereto, and to the mode of carrying the same into effect as herein provided.

ARTICLE I. The directors of said corporations so consolidated under the name of the "Lake Shore Railway Company" shall be in number thirteen.

ARTICLE II. The first election of directors of the Lake Shore Railway Company shall be held at the principal office now jointly occupied by the parties hereto, in the city of Cleveland, in the State of Ohio, on the 19th day of March, A. D. 1869, between the hours of two and four p. m. All stockholders in either of the above-named companies entitled to vote at any election of directors in either of said companies shall have the right to vote at said election in person or by proxy, and shall be severally entitled to one vote for each and every share of stock held or owned by such stockholder in either of said companies.
70 The thirteen persons, being legally qualified, receiving the highest number of votes at the said election, shall be the first directors of the said Lake Shore Railway Company, and shall hold their office until their successors are elected, and qualified according to law.

ARTICLE III. The capital stock of the said Lake Shore Railway Com-

pany shall be fifteen millions of dollars, to be divided into three hundred thousand shares of fifty dollars each; and whereas the shares in the said two corporations were, by and under the provisions of a lease and agreement between the parties hereto, of date October 8th, A. D. 1867, equalized in value, it is hereby agreed that each share in the one company is and shall be taken to be of equal value with such share in the other company, and that each and every holder of shares
71 in either of said companies shall, after having obtained such increase in the number of his shares as he may be entitled to under the provisions of said lease and agreement, and under the action and authority of the said company issuing said shares, be entitled to receive, on surrendering of his certificate for the shares so held by him, an equal number of shares in said Lake Shore Railway Company; and said company shall, without delay, issue such certificates on demand of any such stockholder.

ARTICLE IV. After the consolidation herein provided for is perfected, and after said election, no stockholder in either of the companies parties hereto shall be permitted to vote at any meeting of the stockholders of said consolidated company, until they have surrendered their certificates of stock in company, and received in exchange certifi-
72 cates of stock in the said consolidated company.

ARTICLE V. All and singular the rights, franchises, privileges, real estate, depot-grounds, rights of way, road-bed, iron rails, rolling-stock, money, choses in action, accounts, and property of every description, name, and nature belonging to either of said companies, and the right, title, equity, or interest which either may have, present, future, or contingent, in any property or credit, with all appurtenances, shall, upon the ratification of these articles and the election of the first board of directors of the said Lake Shore Railway Company as herein and by law provided for, be held, owned, and controlled by the said Lake Shore Railway Company, its successors and assigns, as fully and completely to all intents and purposes as the said respective parties hereto
73 do or can now hold, own, use, or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Lake Shore Railway Company.

ARTICLE VI. All just debts, guaranties, liabilities, and obligations existing against either of the said companies, parties hereto, at the time of the taking effect of this consideration, shall be and are hereby assumed, and the same shall be provided for, paid, and discharged by the said consolidated company; and all contracts and agreements existing between either of the parties hereto and other companies, or with any person or persons, shall be carried out and performed by the said consolidated company.

ARTICLE VII. All books, vouchers, records, instruments of title, cash, evidences of debt, contracts, and other documents pertaining to the business or property of the said companies, parties hereto, shall,
74 without delay, be delivered to the proper officer of the consolidated company, and the said books, records, and papers shall be delivered and taken, so far as necessary, as the records and books of said consolidated company, and said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if the same had remained in the offices of the original companies.

ARTICLE VIII. It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said companies parties hereto at a meeting thereof called separately for the purpose of taking the same into consideration, and ratifying or rejecting the same. Due no-

enforce by

tice of the time and place of such meeting, and the objects thereof, shall be given as provided by law. The time of such meeting of stockholders of the Cleveland and Toledo Railroad Company shall be held on the 19th day of March, A. D. 1869, between the hours of 10 a. m. and 2 p. m., and the place, the office of the Lake Shore Railway Company, in the city of Cleveland; the time of such meeting of the stockholders of the Lake Shore Railway Company shall be on the 19th day of March, A. D. 1869, between the hours of 10 a. m. and 2 p. m., and the place the office of the company in the city of Cleveland.

ARTICLE IX. All elections for directors of said consolidated company, after the first election of directors herein provided for, shall take place at such time and place and in such manner as may be prescribed by the by-laws of the board of directors of the consolidated company.

In witness whereof said Cleveland and Toledo and Lake Shore Railway Companies have caused their respective corporate seals to be hereunto affixed, and these presents to be subscribed by their presidents and secretaries in the city of Cleveland, this eleventh day of February, A. D. 1869.

CLEVELAND & TOLEDO R. RD. CO.,
By GEO. B. ELY, *President.* [SEAL.]

Attest:
GEO. B. ELY, *Sec't'ry.*

LAKE SHORE RAILWAY COMPANY,
By J. H. DEVEREAUX, *V. President.* [SEAL.]

Attest:
WM. CROWELL, *Sec't'ry.*

[20-cent in. rev. stamp.]

OFFICE OF THE CLEVELAND AND TOLEDO RAILROAD COMPANY,
Cleveland, April 14, 1869.

I hereby certify that the foregoing agreement, hereto attached, entered into by and between the board of directors of this company with the board of directors of the Lake Shore Railway Company, both corporations in the State of Ohio, was, on the 19th day of March, A. D. 1869, after more than thirty days' notice (a copy of which is hereto attached) given to each of the stockholders of this company whose places of residence were known, and deposited in the post-office at Cleveland, Ohio, and published in one of newspapers of the city of Cleveland, in which city said corporation has its principal office of business, in the manner required by the statute of Ohio in such case made and provided, was on said day, at the meeting of the stockholders called under said notice, sanctioned by said stockholders by the votes of more than two-thirds of all the stockholders of said corporation present at said meeting by proxy or in person. That the whole number of shares so represented was ninety-two thousand two hundred and sixty-seven, (92,267,) of which the whole number voted in favor of sanctioning the same, and none against; and that the foregoing is an accurate duplicate of the said agreement, and that the same was executed by the president of this company, under its corporate seal, and by virtue of a resolution of the board of directors authorizing the same.

In witness whereof, the secretary of said corporation has hereunto set his hand and the seal of said company on the day and year aforesaid.

[SEAL.] WM. CROWELL,
Secretary C. & T. R. R.

[5-cent int.-rev. st.]

Notice.

OFFICE OF THE CLEVELAND & TOLEDO RAILROAD COMPANY,
Cleveland, February 11th, 1869.

At a meeting of the board of directors this day it was unanimously resolved that the contract for consolidating the capital stock of this company with that of the Lake Shore Railway Company be approved; and it was ordered that a special meeting of the stockholders to ratify said contract of consolidation be held at the office of the company in Cleveland, on Friday, the 19th day of March, 1869, between the hours of 10 a. m. and 2 p. m. It was also ordered that in case of ratification of said contract, a meeting of the stockholders shall be held at the same place, between the hours of 2 and 4 p. m. of said 19th day of March aforesaid, for the purpose of electing directors of such consolidated company. The transfer books of the company will be closed on the 20th day of February, 1869, and opened on the 20th day of March, 1869. In case of your inability to attend the meeting in person, you will please sign the annexed power of attorney and forward the same to Geo. B. Ely, president, with instructions to vote for or against said proposition, as you may see fit.

79

WM. CROWELL,
Secretary.

OFFICE OF THE LAKE SHORE RAILWAY COMPANY,
Cleveland, April 1st, 1869.

I hereby certify that the foregoing agreement hereunto attached, entered into by and between the board of directors of this company with the board of directors of the Cleveland and Toledo Railroad Company, both corporations in the State of Ohio, was on the 19th day of March, A. D. 1869, after more than thirty days' notice (a copy of which is hereto attached) given to each of the stockholders of this company, whose places of residence were known, and deposited in the post-office in Cleveland, Ohio, and published in one of the newspapers of the city of Cleveland, in which city said corporation has its principal office of business, in the manner required by the statute of Ohio in such case made and provided, was on said day, at the meeting of the stockholders called under said notice, sanctioned by said stockholders by the vote of more than two-thirds of all the stockholders of said corporation present at said meeting by proxy or in person. That the whole number of shares so represented was one hundred & thirty thousand and ninety-two shares, (132,092,) of which 131,438 shares voted in favor of sanctioning the same and only 654 shares voted against the same, and that the foregoing is an accurate duplicate of the said agreements, and that the same was executed by the president of the company under its corporate seal, and by virtue of a resolution of the board of directors authorizing the same. In witness whereof, the secretary of this corporation has hereto set his hand and the seal of said company on the day and year aforesaid.

80

81

GEO. B. ELY, [SEAL.]
Sec'ry Lake Shore R'y Company.

[5-cent rev. stamp.]

STATE OF OHIO,
Cuyahoga County:

Before me, a notary public, appeared the Lake Shore Railway Company by Geo. B. Ely, its secretary, who acknowledged the signing and sealing of the foregoing instrument.

[SEAL.] WM. CROWELL,
Notary Public.

Notice.

At a meeting of the board of directors it was unanimously resolved, that the contract for consolidating the capital stock of this company with that of the Cleveland and Toledo Railroad Company be approved, and it was ordered that a special meeting of the stockholders to ratify said contract of consolidation be held at the office of the company in Cleveland, on Friday the 19th day of March, 1869, between the hours of 10 a. m. and 2 p. m. It was also ordered, that in case of the ratification of said contract a meeting of the stockholders shall be held at the same place between the hours of 2 and 4 p. m. of the said 19th day of March aforesaid, for the purpose of electing directors of such consolidated company.

The transfer-books of the company will be closed on the 20th day of February, 1869, and opened on the 20th day of March, 1869.

In case of your inability to attend the meeting in person, you will please sign the annexed power of attorney and forward the same to me with instruction to vote for or against said proposition, as you may see fit.

GEO. B. ELY,
Secretary.

STATE OF OHIO,
Office of Secretary of State, ss:

I, Isaac R. Sherwood, secretary of state of Ohio, do hereby certify that the foregoing is a true copy of articles of consolidation by and between the Cleveland and Toledo Railroad Company and the Lake Shore Railway Company, forming "The Lake Shore Railway Company," filed in this office the 6th day of April, 1869.

In testimony whereof I hereunto subscribe my name and affix the great seal of the State of Ohio, this 19th day of May, A. D. 1872.

[SEAL.] ISAAC R. SHERWOOD,
Secretary of State.

EXHIBIT A.—EXHIBIT D.

Articles of agreement made and entered into this 6th day of April, A. D. 1869, by and between the Lake Shore Railway Company, party of the first part, and the Michigan Southern and Northern Indiana Railroad Company, party of the second part.

Whereas the said first party owns a line of railroad extending from the city of Erie, in the State of Pennsylvania, to the city of Toledo, in the State of Ohio, and the said second party owns lines of railroad extending from Chicago, in the State of Illinois, to said city of Toledo, with branches, which railroads constitute a continuous line of railroad from Erie to Chicago;

And whereas said companies are authorized by law to consolidate and become one corporation, and it is believed that such a consolidation

will be beneficial to the stockholders of the two companies and
85 to the public:

Now, therefore, this agreement witnesseth, that said Lake Shore Railway Company and the said Michigan Southern and Northern Indiana Railroad Company do agree, each with the other, that the said companies shall be consolidated into and form one corporation, which shall have for its name and style the "Lake Shore and Michigan Southern Railway Company," and do prescribe the following terms and conditions for the said consolidation and the mode of carrying the same into effect:

ARTICLE 1. The directors of said corporation so consolidated under the name of the Lake Shore & Michigan Southern Railway Company shall be in number thirteen, and the officers thereof shall consist of a president and one or more vice-presidents, a treasurer and secretary, and other necessary officers, all of whom shall be residents of the
86 United States. The authorized capital stock of said consolidated company shall be thirty millions of dollars. The amount of each share shall be one hundred dollars, and the number of shares shall be three hundred thousand. The holders of shares in either of said companies shall be entitled to receive, on surrender of his certificates for the shares so held by him, a certificate for an equal amount of stock in shares at par in consolidated company; and said company shall, without delay, issue such certificates on demand of any such stockholders. Certificates for half shares may be issued to the holders, who shall be entitled to receive dividends and vote on the same. The shares of the companies consolidated shall be deemed such in the new corporation, entitling the holder to vote and receive dividends, according
87 to their par values, until the consolidated company shall be ready to issue new shares therefor, and shall have given thirty days' notice thereof in a daily newspaper published in Buffalo, Cleveland, Chicago, and New York. And the officers and employees of the companies so consolidated shall continue to be officers and employees of said consolidated company until their successors are duly elected or appointed by the proper authorities of said new corporation.

ARTICLE 2. It is stipulated by the first party, that the whole amount of its capital stock, certificates for the shares of which are now outstanding or in existance, amount, at par, to fifteen millions of dollars, and no more. It is stipulated by the second party, that the whole amount of its capital-stock, certificates for the shares of which
88 are now outstanding or in existance, amounts at par to twelve millions one hundred and twenty-five thousand and six hundred dollars, and no more. It is stipulated by the first party that the amount of its indebtedness in bonds issued or outstanding does not exceed the sum of six millions six hundred thousand dollars; and by the second party, that the amount of its indebtedness in bonds issued or outstanding does not exceed the sum of eight millions eight hundred and seventy-six thousand five hundred and eighty dollars; and by each party with the other, that the amount of its indebtedness and liabilities of every character, so far as known to i's president, vice-president, or treasurer, is now fully disclosed and represented to the directors of the other party.

ARTICLE 3. All and singular the rights, franchises, privileges, real estate, depot-grounds, railroads held by lease, rights of way, road-
89 bed, branches, iron rails, rolling-stock, money, choses in action, accounts, equities, stock and property of every name and nature belonging to either of said companies, and the right, title, equity, or in-

terest which either may have, present, future, or contingent, in any property or credit, with all appurtenances, shall, in whatever State the same may be situate, upon the ratification of these articles and the election of the first board of directors of the said Lake Shore and Michigan Southern Railway Company, as herein by law provided for, be held, owned, and controlled by the said Lake Shore and Michigan Southern Railway Company, its successors and assigns, as fully and completely, to all intents and purposes, as the said respective parties hereto do or can now hold, own, use, or control the same; and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Lake Shore and Michigan Southern Railway Company.

ARTICLE 4. All just debts, guaranties, or liabilities, and obligations existing against either of said companies parties hereto at the time of the taking effect of this consolidation, shall be and are hereby assumed, and the same shall be provided for, paid, and discharged by the said consolidated company, and all contracts and agreements, existing between either of the parties hereto and other companies, or with any person or persons, shall be carried out and performed by the said consolidated company.

ARTICLE 5. All books, vouchers, records, instruments of title, cash, evidences of debt, contracts, and documents pertaining to the business or property of the said companies, parties hereto, shall, without delay, be delivered to the proper officers of the consolidated company; and the said books, records, and papers shall be deemed and taken, so far as necessary, as the records and books of said consolidated company; and said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all parties interested therein.

ARTICLE 6. The first election of directors of said consolidated company shall be held in the city of Cleveland on the second day of June, A. D. 1869. All subsequent elections shall take place at such time and place and in such manner as may be prescribed by the by-laws of the board of directors of said consolidated company.

In witness whereof the said corporations have caused these presents to be signed by their respective corporate seals this 6th day of April, A. D. 1869.

THE LAKE SHORE RAILWAY COMPANY,
By J. A. DEVEREUX, *President.* [L. S.]

Attest:

GEO. B. ELY, *Secretary.*

THE MICHIGAN SOUTHERN AND
NORTHERN INDIANA RAILROAD CO.,
By E. B. PHILLIPS, *President.* [L. S.]

Attest:

D. P. BARLEY, *Secretary.*
W. W. BOYNTON, *Judge.*

THE STATE OF OHIO,
Lorain County, ss:

I, Wm. N. Briggs, clerk of the court of common pleas, in and for the county of Lorain, do hereby certify that the above and foregoing is truly taken and correctly copied from the records of the proceedings of said court.

In testimony whereof I hereunto subscribe my name and the seal of said court, at Elyria, in said county, this 4th day of March, A. D. 1874.

[SEAL.] WM. N. BRIGGS, *Clerk.*

Journal entry.

And afterwards, at the December term, 1873, of this court the following order was made in this case, to wit:

JOSEPH SHEILDS
vs.
THE STATE OF OHIO.

Motion for the allowance of a writ of error.
Ordered, that the motion be and the same is hereby granted.

93 And afterwards, at the December term of said supreme court, to wit, on the second day of May, 1874, there was issued out of said supreme court the following writ of error, in the words and figures following, to wit:

Writ of error.

THE STATE OF OHIO,
City of Columbus:

To the judge of the common pleas court within and for the county of Lorain, greeting:

Whereas it is alleged that in the records and proceedings, and also in the rendition of judgment, in a certain action of indictment which was lately in our said court before you, wherein the State of Ohio, defendant in error, was plaintiff, and Joseph Sheilds, plaintiff in error, was defendant, error has intervened to the damage of the said plaintiff in error, and we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid
94 in this behalf, do command you that if final judgment be *be* given thereupon, then without delay you do distinctly and openly, under the seal of your court, annex to and return herewith an authenticated transcript of all judgments of your court in said action, as also all things touching the same, to our said supreme court, at the city of Columbus, forthwith, so that the same being inspected, we may at said next term of our said supreme court cause further to be done thereupon what of right and according to the law of the land ought to be done.

Witness Rodney Foos, clerk of our said supreme court of Ohio, at Columbus, this 2nd day of May, 1874.

[SEAL.] RODNEY FOOS, *Clerk*,
By ORANGE S. FRAZER, *Deputy*.

Said writ was endorsed on the back thereof as follows: Supreme court of the State of Ohio. No. 561. Joseph Sheilds vs. The State of Ohio. Writ of error. Returnable forthwith.

95 *Return of writ of error.*

And afterwards, on the fourth day of May, 1874, said of error was returned to the said supreme court with an authenticated transcript of the record and proceedings and all things touching the said case in the court of common pleas of Lorain County, Ohio, attached to said writ, and which authenticated transcript of the record and proceedings and all things touching said case in said court was as follows, to wit:

THE STATE OF OHIO,
Lorain County, ss:

Pleas had before the court of common pleas within and for the county and State aforesaid, at a term thereof begun and held at Elyria, in said county, on the twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-four; the following proceedings were had in a certain cause, wherein the State of Ohio was plaintiff,
96 and Joseph Sheilds, John Doe, and Richard Roe were defendants.
Present, holding said court, honorable W. W. Boynton, judge thereof.

THE STATE OF OHIO
vs.
JOSEPH SHEILDS, JOHN DOE, RICHARD ROE. } Assault & battery.

Be it remembered that at a term of the court of common pleas, begun and held at Elyria, on the twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-four, came the jurors of the grand jury, and presented the following bill of indictment against Joseph Sheilds, John Doe, and Richard Roe, to wit:

Indictment.

THE STATE OF OHIO,
Lorain County, ss:

At a term of the court of common pleas, begun and holden at the court-house in Elyria, within the county of Lorain and State of Ohio, on the
97 twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-four, the jurors of the grand jury, good and lawful men of the county aforesaid, then and there duly returned, empannelled, tried, and sworn, and charged to inquire within and for the body of the county aforesaid, at the term of the court aforesaid, upon their oaths aforesaid, and in the name and by the authority of the State aforesaid, do find and present that Joseph Sheilds, John Doe, and Richard Roe, late of the county of Lorain aforesaid, on the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and seventy-three, at the county of Lorain aforesaid, did unlawfully, violently, and in a menacing manner assault and
98 threaten one Austin Ulrich, then and there being, and him the the said Austin Ulrich then and there did beat, wound, and ill-treat, and other wrongs to the said Austin Ulrich then and there did, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

GEORGE P. METCALF,
Prosecuting Attorney.

Which indictment was indorsed as follows, to wit: The State of Ohio vs. Joseph Sheilds, Richard Roe, & John Doe. Indictment for assault & battery. A true bill. George W. Young, foreman of the grand jury. George P. Metcalf, prosecuting attorney. This indictment was found upon testimony sworn and sent to the grand jury at the request of the prosecuting attorney. George W. Young, foreman of the grand jury.

And thereupon an order of arrest was issued as follows, to wit:

Capias.

THE STATE OF OHIO,
99 *Lorain County, ss:*

To the sheriff of said county, greeting:

We command you to take Joseph Sheilds, Richard Roe, and John Doe, and them safely keep, so that you have their bodies before the judge of the court of common pleas, at the court-house in Elyria, in said county of Lorain, forthwith, to answer to an indictment for assault and battery, and hereof fail not; and have you then and there this writ.

Witness Wm. N. Briggs, clerk of said court, and the seal thereof, at Elyria, this 15th day of January, A. D. 1874.

[SEAL.] WM. N. BRIGGS,
Clerk of said Court.

Return.

And afterwards came said sheriff, and returned said writ with the following endorsement thereon, to wit:

THE STATE OF OHIO,
Lorain County, ss:

I have arrested the within-named Joseph Sheilds, this 17th
100 day of January, 1874, and have his body now in court. I also, at the same time, delivered to him a true copy of the indictment found against him. John Doe and Richard Roe not found.

R. E. BRAMAN, *Sheriff.*

Fees—service, 90; mileage, 20; attendance, 75; return, 15; total, $2.00.

And at the January term of said court of common pleas, begun and held on the twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-four:

Present, holding said court, honorable W. W. Boynton, judge thereof, on the 17th day of January, 1874.

Journal entry.

This day came George P. Metcalf, who prosecutes for the State in this behalf, and the defendant, Joseph Sheilds, being placed at the bar of the court, and the indictment being read to him, and the court having asked him, "Are you guilty of the offence therein charged, or
101 are you not guilty?" he, for plea thereto, says that he is not guilty in manner and form as he stands charged in said indictment, and thereupon the court ordered that said defendant give bonds in the sum of two hundred dollars for his appearance from day to day during the present term of this court; and thereupon came said Joseph Sheilds, with George G. Washburn, his surety, and entered into a recognizance in the sum of two hundred dollars for his appearance from day to day during the present term of this court.

And afterwards, at this term, a jury being called, came, to wit: Wm. H. Root, M. Z. Andrews, A. M. Parmely, Solon H. Rhodes, Casper Dute, T. L. Taylor, Shelden Paddock, Charles Collins, Thomas Peachy, Stephen Cole, Henry Tyler, and John N. Gifford, good and lawful men, who, being duly impannelled and sworn to well and truly try and true
102 deliverance make between the State of Ohio and the prisoner at

the bar, Joseph Sheilds, came and returned into court their written verdict in the words and figures following, to wit:

"We, the jury in this case, being duly impannelled and sworn to well and truly try and true deliverance make between the State of Ohio and the prisoner at the bar, Joseph Sheilds, do find that the prisoner at the bar, Joseph Sheilds, is guilty.

"WM. H. ROOT,
Foreman."

And thereupon came said defendant and filed his motion for a new trial in this cause, which motion, upon consideration, the court overrulled, to which ruling of the court the defendant excepted, and thereupon presented his bill of exceptions to the rulings of the court in this case, and prayed the court to allow the same, which was accordingly done in open court and ordered to be made a part of the
103 record in this case, and thereupon the court having asked said defendant whether he had anything to say why judgment should not be pronounced against him, and said defendant having nothing to say, it is therefore the judgment of the court and the sentence of the law that said defendant, Joseph Sheilds, pay a fine of twenty-five dollars and also the costs of this prosecution; ordered, that execution issue to collect said fine and costs.

And afterwards at said term of said *said* court—

J. E.

And now comes said defendant, Joseph Sheilds, and moves the court to suspend the execution of the judgment and sentence in the case, to enable him to apply to the supreme court for a writ of error herein, and the court being fully advised in the premises grant said motion, and order the suspension of said judgment and sentence until
104 the next term of this court. It is further ordered that said defendant give bonds in the sum of two hundred dollars for his appearance on the first day of the next term of this court, and from term to term until the cause in error shall be determined, and thereupon came said Joseph Sheilds, with George G. Washburn, his surety, and entered into a recognizance in the sum of two hundred dollars for his appearance on the first day of the next term of this court, and from term to term until the case in error shall be determined.

Motion for new trial.

Motion for new trial, filed February 7th, 1874.

THE STATE OF OHIO
vs.
JOSEPH SHEILDS.

Court of common pleas, Lorain County, Ohio.

And now comes the defendant and moves the court to set aside the verdict and grant him a new trial for the following causes, to wit:
105 1st. The court erred in its charge to the jury as to the law. 2nd. The verdict was against the evidence and against the law.

J. MASON & HALE & FAY,
Attys. for Deft.

Bill of exceptions.

THE STATE OF OHIO } Bill of exceptions. Indictment for assault &
vs. } battery.
JOSEPH SHEILDS. }

Be it remembered that on the trial of this cause in the court of common pleas within and for the county of Lorain, at the January term, A. D. 1874, the State, to maintain the issue on its part, gave the admission made by the defendant in open court before the jury, that on the day alleged in the indictment one Austin Ulrich, as alleged therein, took passage on one of the passenger-trains of the Lake Shore & Michigan Southern Railway Company, at Elyria, in said county of Lorain, for the city of Cleveland, on that part of said road chartered as the Junction R. Road Company, both places being situate on the
106 said railroad; that the said Austin Ulrich, on said train, presented to defendant, Shields, the conductor on said train, the sum of seventy-five cents in payment of his fare for a distance of twenty-five miles which he proposed to ride in said cars, being the distance between Elyria and Cleveland; that said Shields, who was the conductor of said train, thereupon refused to receive said sum of money in full payment of said fare, but demanded and required said Ulrich to pay for said fare ninety cents; that said Ulrich thereupon refused to pay more than seventy-five cents, or three cents per mile; whereupon said Sheilds required and commanded said Ulrich to leave said train, and, on his refusal so to do, the train having been stopped for that purpose,
107 said conductor, with force, removed him from said car, and in doing so, with his assistants, who were brakemen on the train, used all the necessary force, and no more, to overcome the resistance made by said Ulrich, and ejected him from the train; all done in said county of Lorain. The defendant admitted the road had been built and in operation for over fifteen years.

Whereupon this defendant, to maintain the issue on his part, gave in evidence the rules and rates of fare adopted by said company, and it was admitted in behalf of the State that ninety cents was at the time aforesaid the regular rate and fare prescribed and required by said railway company for passage for each passenger on its trains between Elyria and Cleveland, and posted up at its depots, and that the defendant was by the rules of the company required to collect that amount, or on refusal of the passenger to pay the same, to cause him to leave
108 the train.

Defendant, further *maintain* to maintain the issue on his part, gave in evidence the charter of the said Lake Shore & Michigan Southern Railway Company, which company owned and operated the railroad on which said cars were being run, and the said train; which charter is as follows, to wit:

1st. An act to incorporate the Junction Railroad Company, passed March 2, 1846, contained in Ohio Local Laws, vol. 44, page 284.

2nd. An act to incorporate the Toledo, Norwalk and Cleveland Railroad Company, passed March 7th, 1850, contained in Ohio Local Laws, vol. 48, page 316. Also an act to amend the same, passed January 20th, 1851, contained in vol. 49 of Ohio Local Laws, page 460. An act relating to railroad companies, passed March 3rd, 1851.

3rd. The records and journals respectively of the Junction
109 Railroad Company, of the Toledo, Norwalk and Cleveland Railroad Company, which prove, as was admitted by the State and

defendant before the jury, the consolidation of said two companies into the Cleveland & Toledo Railroad Company, under the power conferred by said act of January 20th, 1851, and the act of March 3rd, 1851, printed in Exhibit A, hereto attached. The production of said record and proof from the same is waived.

The foregoing local acts conferring said charter are contained in the pamphlet containing laws of Ohio relating to the Cleveland & Toledo Railroad Company, and are found on pages Nos. 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, and the same as therein contained are made part of this bill, and attached thereto as Exhibit A.

The defendant further gave in evidence the written agreement of consolidation of the Cleveland & Toledo Railroad Company and the
110 Lake Shore Railway Company, of date of April 6th, 1869, which agreement is attached hereto as Exhibit C, and made a part of this bill; and also gave in evidence the agreement in writing of consolidation between the Lake Shore Railway Company and the Michigan Southern and Northern Indiana Railroad Company, thus forming the Lake Shore & Michigan Southern Railway Company; which agreement, marked D, hereto attached as an exhibit, is made a part of this bill.

And no other or further evidence was given by either party. And thereupon, after argument, the court charged the jury as follows:

Charge to jury.

That the acts of the legislature offered in evidence, considered in connection with the act of Feb'y 11, 1848, made part of the charter of the Toledo, Norwalk and Cleveland R. R. Co., when formed from said consolidation, to all the restrictions in said acts, and that the Junc-
111 tion R. R. charter reserved to the State the power to fix or reduce the fare on said road after the lapse of ten years, if deemed to' high, and that said Cleveland & Toledo Co. had not power uncontrollable by the legislature to fix such rates of fare as deemed reasonable, by reason of the eleventh section of the Junction R. R. charter, after ten years had elapsed from the building of said road. The court also charged the jury that the legal effect of the consolidation of the Cleveland & Toledo Co. with the Lake Shore R'y Co., and the consolidation of the Lake Shore R'y Co. with the Michigan Southern & Northern Indiana R. R. Co., forming the present Lake Shore & Michigan Southern R'y Co., under said articles of agreement and the laws of the State, was to create a new corporation under the general laws of the State, enacted under the present constitution, and that the legislature could not, by such laws, constitutionally authorize the transfer from the old companies to the new of franchises and privileges which it could not
112 confer upon the new company by general laws; that under the present constitution the legislature could not confer on a R. R. Co. the right to fix the rates of fare not subject to reduction or regulation by law, and that, therefore, the Lake Shore and Michigan Southern R'y Co. could not, under its existing organization, avail itself in any manner of the powers conferred on the Junction Company by the 11th section of its charter to fix such rates of fare as the company deemed reasonable; that the act of April 25, 1873, limiting the right of the R. R. Co. to three cents a mile for distances of over eight miles, was applicable to the L. S. & M. S. R'y Co., and their duty would be discharged by returning a verdict of guilty against the defendant.

To which charge of the court the defendant excepted at the time. And

thereupon, after verdict, the defendant moved the court to set
113 the same aside and grant a new trial, for reasons in the motion set forth, which motion was overruled by the court; to which the defendant excepted, and prayed the court to sign and seal this his bill of exceptions in that behalf, which is done accordingly, and ordered to be made a part of the record in said case.

[SEAL.] W. W. BOYNTON, *Judge.*

EXHIBIT A.

Exhibit A.—Consolidation.

An act relating to railroad companies:

CONTINUOUS LINES OF RAILROAD MAY CONSOLIDATE.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, that whenever the lines of any railroad companies in this State, or any portion of such lines, have been or may be constructed so as to admit the passage of burden or passenger cars over any two or more of such road', continuously, without break or interruption, such companies are hereby authorized to consolidate themselves into a single corporation, in the manner following:

114 I. The directors of said two or more corporations may enter into an agreement under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, which shall not exceed thirteen, the time and place of holding the first election of directors, the number of shares of capital stock in the new corporation, the amount of each share, the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; with such other details as they shall deem*ed* necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights, and privileges conferred upon such said two or more corporations; by the several
115 acts incorporating the same or relating thereto, respectively, and shall be subject to all the restrictions and perform all the duties imposed by such acts, so far as the same may be consist*ant* with the provisions of this act: Provided, that all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid at least par value for each of the shares so held by them, if they shall so require, previous to said consolidation being consum'ated.

II. Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of said corporations separately, at a meeting thereof, to be called upon a notice of at least thirty days, specifying the time and place of such meeting and the object thereof, to be addressed to each of said stockholders, when their place of
116 residence is known, and *and* deposited in the post-office, and published for at least three successive weeks in one newspaper, in at least one of the cities or towns in which each of said corporations has its principal office of business, and has been sanctioned by such stockholders, by the vote of at least two-thirds in amount of the stockholders present at such meeting, voting by ballot, in regard to such agreement,

either in person or by proxy, each share of capital stock being entitled to one vote; and when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders separately after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

CERTIFICATE OF CONSOLIDATION FILED.

SEC. 2. Upon making the agreement mentioned in the preceding section in the manner required therein, and filing a duplicate or
117 counterpart thereof in the office of the secretary of state, the said two or more corporations mentioned or referred to in the said first section shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein.

RIGHTS, FRANCHISES, ETC., TRANSFERRED TO AND VESTED IN NEW CORPORATIONS.

SEC. 3. Upon the election of the first board of directors of the corporation created by the agreement in the first section of this act mentioned, and by the provisions of this act, all and singular the rights and franchises of each and all of said two or more corporations parties to such agreement, all and singular their rights and interests in and to every species of property, real, personal, and mixed, and things in action, shall be deemed to be transferred to and vested in such new cor-
118 poration, without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the right of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations parties to such agreement should have continued to retain the title and transact the business of such corporations; and the titles and the real estate acquired by either of said two or more corporations shall not be deemed to revert or be impaired by means of anything in this act contained: Provided that all rights of creditors and all liens upon the property of either of said corporations, parties to said agreement, shall be, and hereby are, preserved unimpaired, and the respective corporations shall continue to exist, so far as may be necessary to enforce the same: And provided further, that all the debts, liabilities, and duties
119 of either company shall thenceforth attach to such new corporation and be enforced from the same to the same extent and in the same manner as if such debts, liabilities, and duties had been incurred by it.

RAILROAD COMPANIES MAY AT ANY TIME AID EACH OTHER WITH A VIEW TO CONSOLIDATING.

SEC. 4. Any railroad company heretofore or hereafter incorporated may at any time, by means of subscription to the capital stock of any other company or otherwise, aid such company in the construction of its railroad, for the purpose of forming a connection of said last-mentioned road with the road owned by the company furnishing said aid, or any railroad company organized in pursuance of law may lease or purchase any part or all of any railroad constructed by any other com-

pany if said company's lines are so connected, may enter into any arrangement for their common benefit, consistant with and calculated to promote the object for which they were created: Provided, that
120 no such aid shall be furnished, nor any such purchase, lease, or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof, at such time and place and in such manner as they shall designate, and the holders of at least two-thirds of the stock of such company represented at such meeting in person or by proxy, and voting thereat, shall have assented thereto.

HOW CONTRACTS BETWEEN COMPANIES MAY BE ENFORCED.

SEC. 5. All contracts between railroad companies under the provisions of this act may be enforced by a decree of the supreme court in a suit in chancery brought for that purpose; and any two judges of said court in vacation may, after hearing, make any provisional *provisional* order or decree in such suit which may be necessary to enforce such *such* contracts, to be in force until the next session of said court
121 in the proper county.

DIRECTORS MAY NEGOTIATE BONDS.

SEC. 6. The directors of any railroad company are hereby authorized to sell or negotiate the bonds or notes issued by said company or received by it in payment of subscription to its capital stock, or otherwise, at such times and at such places, either within or without this State, and at such rates as in their opinion will best advance the interests of such company; and if such bonds or notes are thus sold at a discount, such sale shall be as valid in every respect as if sold at their par value.

Passed March 3, 1851.

Junction Railroad charter.

An act to incorporate the Junction Railroad Company.

SEC. 1. Be it enacted by the general assembly of the State of Ohio that Herman Ely, Artemas Beebe, Eber W. Hubbard, Seymour W. Baldwin, Albert A. Bliss, Horace A. Kendall, of the county of
122 Lorain; Benjamin Benson, George G. Baker, Platt Benedict, and Frederick S. Chapman, of the county of Huron; John Fuller, George W. Choate, D. Hamilton, Foster M. Follett, and Burr Higgins, of the county of Erie; R. P. Buckland, Jesse S. Olmsted, of the county of Sandusky, and those who may hereafter become stockholders in the manner hereafter prescribed, their successors and assigns, be, and they are hereby, created a body corporate, by the name and style of the Junction Railroad Company, with perpetual succession, and by that name and style shall be, and hereby are, made capable in law to have, purchase, receive, pos'ess, sell, convey, and enjoy real and personal estate, and retain to them, their successors and assigns, all such lands, tenements, and hereditaments as shall be requisite and actually necessary for their accom'odation and convenience in the transaction of
123 their business; to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in courts of record and elsewhere, and also to have and use a common seal, and the same to alter, break, renew, or change at pleasure.

SEC. 2. The said corporation are hereby vested with the right and authority to construct a railroad, commencing at such point on the Cleveland, Columbus and Cincinnati Railroad as the directors may select, either in the county of Cuyahoga or Lorain, and within 30 miles from Cleveland, thence to Elyria, in Lorain County, unless the junction with the Cleveland and Columbus Road should be made at Elyria; and from thence on the most feasible routes to intersect the Mad River and Lake Erie Railroad at Bellevue, or at such other point as the directors shall choose, and thence to Lower Sandusky, in Sandusky County;
124 and the said corporation shall have power to construct the said railroad or a branch of the same from Elyria to Sandusky City, in Erie County, and from thence to Lower Sandusky; and also, if the directors of said company and the directors of the Cleveland, Columbus and Cincinnati Railroad Company cannot agree upon the terms of junction with said Cleveland, Columbus and Cincinnati Railroad Company, then, in that case, the railroad shall commence at the city of Cleveland, Cuyahoga County; or the directors of the respective companies may agree that the terms of a junction between the two companies may be decided by the supreme court.

SEC. 3. That the capital stock of said company shall be one million of dollars, and shall be divided into shares of fifty dollars each.

SEC. 4. That the above-named persons, or any two of them, are authorized to open books for securing subscriptions to the capital stock of
125 said corporation, to be opened at such time or times and at such place or places as they may deem expedient, under the direction of not less than three of the persons named as aforesaid, having given not less than ten days' previous notice in a newspaper published in the county where books of subscription are to be opened of the time and place of opening said books; and as soon as twenty thousand dollars of said stock shall be subscribed, they may give a like notice for a meeting of stockholders, to meet at such time and place as they may designate, to choose directors, to continue in office for the term of one year and until others are duly appointed in their stead. At the time and place appointed thirteen directors shall be chosen by ballot, by such of the stockholders as shall attend for that purpose, either in person or by proxies; each share of the capital stock shall entitle the owner to
126 one vote; the persons named in the first section of this act, or such of them as may be present, shall be inspectors of such election, and shall certify under their hands what persons are elected directors, and appoint the time and place of holding the first meeting of directors; seven directors shall form a board, and be competent to transact all business of the corporation; a new election of directors shall be made annually, at such time and place as the stockholders at their first meeting shall appoint, or as the laws of the corporation may require; and the directors chosen at any election shall, as soon thereafter as may be convenient, choose out of their number one person to be president and one to be treasurer of the corporation.

SEC. 5. That upon every subscription there shall be paid at the time of subscribing, to the person authorized to open said books, the sum of five dollars upon every share subscribed, or the same may be
127 secured to be paid when called for by the directors, at the option of the person receiving such subscriptions, and the residue thereof shall be paid, in such instalments and at such times as may be required by the president and directors of said company, to the treasurer thereof, and the said company are authorized to take and receive from such per-

sons as shall purchase such stock such bonds or notes for the residue of the purchase-money of said stock as they may think expedient.

SEC. 6. That if the said railroad company shall not be organized within five years from the date of passage of this law and not less than twenty miles of the road be completed within ten years from the commencement of the work, then this act shall be null and void.

SEC. 7. That the directors shall have power to determine the number and kind of tracks, turnouts, branches, carriages, conveyances,
128 store-houses, depots, and other fixtures, and machinery; prescribe the mode of transportation, and have power to construct a single or double-track railroad.

SEC. 8. That said company shall have a right to enter upon any land to survey and lay down said road, and to take any materials, except timber, upon the condition hereafter specified, necessary to the construction or repair of said work; and whenever any lands or materials shall be taken for the construction of said work, and the same shall not be given or granted to said company, and the owners thereof do not agree with said company as to the compensation to be paid therefor, or in case the owner or owners are under any disability to contract, or are absent from the State, application may be made by the said company to any judge of the court of common pleas of the county in which such lands or materials may be; and thereupon it shall be
129 the duty of such judge to issue his warrant to the sheriff of said county, commanding him to summon three disinterested freeholders to arbitrate upon the compensation to be awarded to such person or persons, who shall be sworn and paid as in other cases; and they, or a majority of them, shall award as arbitrators between the two parties, and render copies of their award to each of the parties in writing, from which award either party may appeal to the court of common pleas for the county in which such land or materials may have been situated; and in all cases where compensation shall in any manner be claimed, it shall be the duty of the arbitrators and the court to estimate and set off any advantage which the location and construction of said road may be to the claimant, and said company shall have the right to retain, own, hold, and possess said materials, upon first paying
130 or tendering to the owner or owners thereof a reasonable compensation in money for the same, and to the use and occupation of said lands, as fully and absolutely as if the same had been granted and conveyed to said company by deed: Provided, that before the said company shall enter upon any land for the purpose of constructing the said road, they shall pay or secure to the owner of said land payment for the same as may be awarded by the provisions of this section.

SEC. 9. That if it shall be necessary in the selection of the route or construction of the road, to connect the same with, or to use any road, street, or bridge made or executed by any company or persons, incorporated or authorized by any law of this State, it shall be lawful for the said company, and it is hereby authorized to
131 contract and agree with any such other corporation or person for the right to use such road, street, or bridge, or for the transfer of any of the corporate or other rights and privileges of such corporation or persons to the said president or directors of the corporation; and all such other corporations or persons incorporated by or acting under the laws of this State are hereby authorized to make such an agreement, contract, or transfer by and through the agency of their corporate officers, or by such person or persons as by any law of this State are intrusted with the direction and management of such

road, street, or bridge; and every contract to transfer made in pursuance of the authority hereby granted, when executed by the several parties under their respective corporate seals, or otherwise legally authenticated, shall vest in the corporation all the rights and privileges vested in said corporation or persons as shall be specified in the contract
132 and agreement above referred to.

SEC. 10. Whenever it shall be necessary for the construction of the railroad to intersect or cross any stream of water or water-course, or any railway or highway lying in or across the route of said road, it shall be lawful for the corporation to construct the said railway across or upon the same, but the corporation shall restore the stream or water-course, road, or highway thus intersected to its former state, or place it in such condition as not to impair its former usefulness; and if said corporation, after having selected a route for said railway, find any obstacle in continuing said location either by difficulty of construction or procuring the right of way at a reasonable cost, or whenever a better and cheaper route can be had, it shall have authority to vary the
133 route and change the location.

SEC. 11. That said corporation may demand and receive from all persons travelling upon said road, or for the transportation of property, such rates of toll as the corporation may think reasonable, which rates they shall have posted up in some public place at each of the depots.

SEC. 12. That at the regular annual meeting of the stockholders of said company it shall be the duty of the president and directors in office for the previous year to exhibit a clear and distinct statement of the affairs of the company, and the president and directors shall annually or semi-annually declare and make a true dividend of the net profits arising from the revenues of the company, deducting the necessary current and probable contingent expenses, and that they shall divide
134 the same among the stockholders of said company in proportion to their respective shares.

SEC. 13. That every president, director, treasurer, and secretary of said company, before he acts as such, shall swear or affirm, as the case may be, that he will well and truly discharge the duties of his said office to the best of his skill and judgment; and the arbitrators authorized by the eighth section of this act, before they proceed to estimate damages, shall severally take an oath or affirmation faithfully, impartially, and honest'y to discharge their duty; and the said appraisers shall severally receive for their services one dollar per day for every day they may necessarily be employed, which shall be paid by said corporations.

SEC. 14. The said president and directors, or a majority of *of* them, may appoint all such officers, engineers, agents, or servants whatever they may deem necessary for the transaction of the business
135 of the company, and may remove any of them at their pleasure; that they, or a majority of them, shall have the power to determine, by contract, the compensation of the engineers, officers, agents, or servants in the employ of said company, and to determine by their by-laws the manner of adjusting and settling all accounts against the said company, and also the manner and evidence of transfer of stock in said company; and they or a majority of them shall have power to pass by-laws which they may deem necessary or proper for exercising all the powers vested in the company hereby incorporated, and for carrying the objects of this act into effect; provided only, that such by-laws shall not be contrary to the laws of this State or of the United States.

SEC. 15. That if any person shall wilfully, by any means what-
136 ever, injure, impair, or destroy any part of said railroad constructed by said company under this act, or any of the necessary works, buildings, cars, or machinery of the said company, such person or persons so offending shall, each of them, for every such offence, forfeit and pay to the said company, by an action of debt, with costs of suit, in any court having cognizance thereof, and shall also be subject to an indictment in the court of common pleas of the county where such offence may be committed, and upon conviction of such offence shall be punished by fine, not exceeding five hundred dollars, and imprisonment in the jail of said county not exceeding ten days.

SEC. 16. That said corporation shall have power to locate and construct branch roads from the main route to other towns or places in the several counties through which said road may pass.

137 SEC. 17. That this company may, and they are hereby authorized, to commence, complete, and put in operation any part of said road, or any branch thereof aforesaid, at any point on the route of said railroad, which the interests of the company may require to be first commenced and completed, and that the said company may demand and receive the same rate of toll and transportation, and all the benefits that would accrue to each division so commenced and completed, as fully as if the entire work was commenced, completed, and put in operation as aforesaid.

SEC. 18. If the instalments remain unpaid for sixty days after the time of payment has elapsed, the directors, in the name of the company, may collect the same by suit, or may sell the stock by public
138 auction, for the instalments then due, giving twenty days' notice of the time and place of sale, by advertisement in some newspaper of general circulation in the county where such sale is to be made, and the residue of the money arising from such sale, after paying such instalments and costs, shall be paid over to the former owner.

SEC. 19. That it shall be the duty of the directors to keep open books of subscription at the office of the company until the number of shares authorized by this act shall be subscribed.

SEC. 20. That said company shall not contract debts or liabilities to a greater amount than the stock subscribed and held by responsible stockholders, remaining unexpended, together with the means on hand, and that which may be reasonably expected to accrue within three years from the time of making such contract, unless at the time of making such contract the party contracting with said company be in-
139 formed of such want of means on the part of such company, and by agreement in writing specifying the time and manner in which such debt shall be paid.

SEC. 21. The governor shall have power to prescribe what price may be charged by said company for the transportation of the public mails of the United States, and of the troops and munitions in war belonging to this State and to the United States, should the board of public works at any time entertain the opinion that the prices charged therefor by such company are unreasonably high, but such power shall not extend so far as to control the time or times of the arrival and departure of the cars on said road, or in any other manner interfere with the regulations of such company.

SEC. 22. After the lapse of ten years from the completion of said
140 road, the State shall have the power to reduce the tolls upon said road, should they be unreasonably high, and exercise the same power at intervals of ten years thereafter.

SEC. 23. At any time after ten years from the completion of said railroad, the said company shall be liable to pay to the State, upon such property transported on said road through the line during the season of canal navigation in this State as the board of public works, by whatever designation it may be known, shall be of the opinion would have been transported on the Ohio Canal but for the existance of said road, such tolls as shall be equal to one-half the tolls charged by the State at the time on like property.

SEC. 24. If the company shall be dissatisfied with the opinion of the board of public works as to the amount of property which, but for the said road, would have been transported on the Ohio Canal,
141 they may review the same by instituting proceedings in the supreme court of Franklin County, as in chancery, making the State and the board of public works parties thereto; and the said court may make such orders and decrees therein as they shall deem proper to accomplish the objects of the section next above.

Passed March 2, 1846.

T., N. & C. R. R. charter.

An act to incorporate the Toledo, Norwalk and Cleveland Railroad Company.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, That Timothy Baker, Charles S. Boult, John R. Osborn, George G. Baker, John Gardner, and James Hamilton, jr., of the county of Huron; Frederic Chapman, S. R. Rawson, L. B. Otis, H. Everett, A. B. Taylor, R. P. Buckland, of the county of Sandusky, and Hezekiah D. Mason, Edward Bissell, Daniel O. Morton, J. W. Bradbury, and John Fitch, of the county of Lucas, and their associates, successors and
142 assigns, be and they are hereby created a body corporate and politic, by the name and style of the Toledo, Norwalk and Cleveland Railroad Company, with perpetual succession, and by that name and style shall be entitled to have and enjoy, and are hereby invested with, all the rights, privileges and franchises, and be subject to all the restrictions of the act entitled "An act regulating railroad companies," passed February 11, 1848, and the act amendatory thereto, except so far as the same may be modified by this act.

SEC. 2. The capital stock of said company shall be two millions of dollars, and said company shall have power to construct a railroad from Toledo, in the county of Lucas, by the way of Norwalk, in Huron County, so as to connect with the Cleveland, Columbus and Cin-
143 cinnati Railroad, at Wellington, in Lorain County, or at some other point in said counties of Huron and Lorain, to be determined by the directors of said company.

SEC. 3. The county commissioners of any county through which said railroad may (in whole or in part) be located, shall be, and they are hereby, authorized to subscribe to the capital stock of said company any sum of money not exceeding one hundred thousand dollars; and to pay the same they shall have the power to borrow any sum not exceeding the amount so subscribed, at any rate of interest not exceeding seven per cent. per annum, payable semi-annually in advance; and for the final payment of the principal and interest of said sum so subscribed or borrowed, to make, execute, and deliver such bonds, notes, and instruments of writing as may be necessary or proper to secure the payment of the money so subscribed or borrowed, and levy and collect

annually such taxes, together with the profits, dividends, or tolls arising from said stock, will pay, at such time or times as may be agreed upon, said money so subscribed or borrowed, with the interest thereon and the incidental charges.

SEC. 4. No subscription shall be made by the county commissioners of any county aforesaid until a vote of the qualified voters of such county has been had in favor of such subscription, in the manner pointed out in an act regulating the mode of procedure when county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike-roads, or other incorporated companies in this State, passed February twenty-eight, eighteen hundred and forty-six.

SEC. 5. Said company shall be, and is hereby, authorized to connect with any other railroad company, and to consolidate its capital stock with the capital stock of any such company, and to have and use the name and style of any such other company, and constitute a part of the same.

Amendment to T., N. & C. charter.

An act to amend the act entitled An act to incorporate the Toledo, Norwalk and Cleveland Railroad Company, passed March 7, 1850.

SEC. 1. Be it enacted by the general assembly of the State of Ohio, That the Toledo, Norwalk and Cleveland Railroad Company is hereby authorized to connect their road with the Cleveland, Columbus and Cincinnati Railroad at any point upon the same in the counties of Huron, Lorain, or Cuyahoga, and shall have power to extend their road to the city of Cleveland, with or without making such connection or extension, in either mode above specified, shall not preclude said company from afterward adopting the other whenever the directors shall so determine. And said company is hereby authorized to lease their road to any railroad company with which it may connect or having a common terminus with it, and shall also have power to alter the *guage* of their road so as to conform to that of any other railroad having such common terminus, or may become the lessee of such railroad, or any portion thereof, of its depots, stations, or railroad accommodations; and said company is authorized to transport its passengers and freight across any navigable river on the line of its road, by a ferry or otherwise, provided said company shall not thereby obstruct or hinder the navigation of such river.

SEC. 2. The commissioners of Sandusky County are authorized to subscribe to the capital stock of said company in behalf of said county, excepting the townships of Townsend or Woodville, any sum not exceeding the sum of seventy-five thousand dollars. And the commissioners of Huron County are also authorized to subscribe to said stock, for and in behalf of the five townships which comprise the north range in said county, jointly, any sum not exceeding fifty thousand dollars, the sum to be so subscribed to be stated in the notices of election herein provided for; and for the purpose of providing for the payment of said stock and the interest upon the securities that may be issued for the same, the said commissioners, respectively, shall have the like powers as are granted, and perform the like duties as are contemplated in the 3rd and 4th section of the act to which this is amendment.

SEC. 3. The vote of the qualified electors of Sandusky County with the exceptions above mentioned, and of the said five townships com-

prising the north range in Huron County, in referance to such subscription, may be taken at any annual spring or fall election, upon
148 twenty days' notice to be given for that purpose, in the manner provided in the act passed February 28th, 1846, referred to in the 4th section of the act to which this is an amendment; and said election shall be held and conducted in like manner as elections for State and county officers; and the judges shall make return of the same to the clerk of the proper county in the same way and within like time as the votes for State and county officers are required to be returned, and the said clerk shall forthwith certify the result of the same to the auditor of his county.

SEC. 4. In case a majority of the votes so cast shall be in favor of such subscription, the commissioners of the proper county shall subscribe to said company the amount of stock so voted, and to pay the same, may issue their bonds to said company, as hereinafter provided, or may, and they are hereby empowered to, borrow money not ex-
149 ceeding in amount the sum so subscribed at a rate of interest not exceeding seven per cent. per annum, payable semi-annually in advance, in the city of New York, upon the credit of the portions of said counties, respectively, so authorizing such subscription; and for the final payment of the principal and interest of said sums so subscribed or borrowed, to make, execute, an' deliver such bonds, notes, and instruments in writing as may be necessary or proper to secure the payment of the money so subscribed or borrowed, and to levy annually on said portions of said counties, and collect, through the treasurer of the proper county, such taxes as, together with the profits, dividends, or tolls arising from said stock, will pay, at such time or times as may be agreed upon, said money so subscribed and borrowed, with interest thereon, and the incidental expenses and charges.

150 SEC. 5. The commissioners of said counties, respectively, shall be the trustees of said stock, with power to sell the same upon a majority vote therefor of the portions of said counties interested therein, and to create a sinking-fund for the final payment of the bonds that may be issued therefor, out of the dividends or profits that may accrue therefrom; and said stock shall, in equity, belong to the several townships on the credit of which the same may be subscribed, in proportion to the amount of the taxable property in such townships, for the year 1850, and all moneys collected by taxation for incidental charges, and the payment of the interest or principal of any bonds that may be issued, and all profits and dividends upon said stock shall be paid to said commissioners, to be by them disbursed to the parties or persons en-
151 titled thereto, or to be invested as in this section contemplated.

SEC. 6. The trustees of any township in or through which said railroad is authorized to be constructed, are hereby authorized and required, with the consent of the electors in said township, to be obtained as herein provided, to subscribe to the capital stock of said company any sum not less than two or more than five per cent. upon the taxable property of such township, as the same appears upon the duplicate of the county in which such township is situate, for the year 1850, the sum to be so subscribed to be stated in the notices to be given of the election.

SEC. 7. No subscription shall be made as aforesaid, without the assent of the electors of such townships, to be obtained as follows: The trustees of such township shall give at least ten days' notice previous to any annual election in such townships, that a vote will be taken at
152 such election on the question of making such subscription, which

notice shall be posted in five of the most public places in such township, and the qualified voters of such township shall vote by ballot, "For subscription" or "Against subscription."

SEC. 8. The judges of election in such township within two days from holding the same shall transmit certified returns of said vote to the auditor of the proper county, and if it shall appear that a majority of said votes shall be in favor of such subscription, the same shall be made as aforesaid, by said trustees, in behalf of said townships.

SEC. 9. For the payment of such subscriptions the trustees of such township shall have power to borrow any sum of money not exceeding the amount so subscribed, at a rate of interest not exceeding seven per cent., payable semi-annually, in the city of New York, in advance;
153 and for the final payment of such subscription or loan, may make and deliver such bonds, orders, or other evidences of indebtedness as may be necessary and proper to secure the payment of such subscription or loan, and shall levy and collect annually such taxes as, together with the dividends and profits arising from said stock, will pay, at such time or times as may be agreed upon, the full amount of such subscription or loan, with the interest thereon, and incidental charges.

SEC. 10. All taxes to be levied by said trustees under this act, shall be by them certified to the auditor of the county, and by him be placed upon the county duplicate and assessed against the proper township in the same manner as State and county taxes, and shall be collected by the county treasurer in the same manner as such taxes, and by
154 said treasurer shall be paid out on the order of said trustees of the township entitled to the same, for the purposes in the last section mentioned, and for no other.

SEC. 11. Whenever the bonds, orders, or other evidences of indebtedness issued by any township under this act, or the interest thereon, shall not be promptly paid when due, the county auditor of the proper county, upon the application of any creditor to whom the arrears of such principal or interest shall be due, shall assess the amount of the same upon such township, and place the same upon the county duplicate, to be collected by the county treasurer, with the other taxes assessed upon said township.

SEC. 12. In case said company shall connect with and consolidate with any other railroad company as provided in the 5th section of the act to which this is an amendment, said companies, when so
155 consolidated, may assume the corporate name and style of the Cleveland and Toledo Railroad Company, or of either of the original companies, as may be mutually agreed upon by the board of directors; and in the event of such consolidation, the affairs of such consolidated company so to be constituted, till the time of the next annual election thereafter of the Toledo, Norwalk and Cleveland Railroad Company, shall be managed by an executive committee of three persons, to be appointed by the respective boards of directors, and afterwards the affairs of such consolidated company shall be managed by a board of seven directors, to be elected and qualified in the manner provided in the act of which this is an amendment. And all the provisions of this act, in respect to subscriptions of stock and otherwise, shall apply to such company so to be constituted in the like manner and to the like
156 extent as the same were intended to and would apply to the Toledo, Norwalk and Cleveland Railroad Company. And in case the railroad company with which the Toledo, Norwalk and Cleveland Railroad Company shall consolidate its stock shall be the Junction Railroad Company, incorporated by an act of the legislature passed March

2d, 1846, sections 9, 10, 11, 15, and 17 of the act last aforesaid shall continue to be and form a part of the law by which said consolidated company shall be governed, but in other respects said consolidated company shall be governed by the laws applicable to the Toledo, Norwalk and Cleveland Railroad Company, and the acts amendatory thereto, and in case of consolidation with said Junction Railroad Company as aforesaid the consolidated company may, and they are hereby authorized, if the directors so determine, to construct two roads for any
157 portion of the distance between Toledo and Cleveland, uniting the lines at such points on the route as the directors of said consolidated company may determine upon, and in that case the foregoing provisions shall apply to both diverging lines as well as to the common line.

SEC. 13. The provisions of the act passed January 31, 1850, respecting the sale of the bonds of the Columbus and Lake Erie Railroad Company and of the Central Ohio Railroad Company are hereby extended to the bonds of the Toledo, Norwalk and Cleveland Railroad Company, and to those of any other railroad company that may consolidate its stock therewith, or to those of the company that may be formed by such consolidation, and to any bonds that may be issued by the virtue of this act, and the issuing of said company's bonds, and of such bonds as may be issued by virtue of this act, shall be taken as evidence
158 in all courts of law and equity that all preliminary conditions have been complied with.

SEC. 14. Jurisdiction is hereby conferred upon the Supreme Court to enforce by decree any agreement of consolidation, or for leasing, or for other accommodations made between any companies as contemplated in this act.

Passed January 20, 1851.

EXHIBIT C.

Articles of agreement made and entered into this eleventh day of February, A. D. 1869, by and between the Cleveland and Toledo Railroad Co. and the Lake Shore Railway Co.

That whereas the railroads respectively owned by the above-named companies have been constructed so as to admit the passage of burden or passenger cars over them continuously, without break or interruption, from the western terminus of said railroad of the said Cleveland
159 and Toledo Company, which is at the city of Toledo, in the State of Ohio, to the eastern terminus of the said railroad of the Lake Shore Company, which is in the city of Erie, in the State of Pennsylvania; and the directors of the respective companies have determined that the interests of the respective stockholders of said companies and the public interest and convenience will be promoted by the union of said railroads into one, and by the consolidation of the respective stock of said companies into one common consolidated stock;

And whereas the said companies are authorized by the laws of Ohio, and especially by the act of the legislature of said State passed March 3, 1851, to effect such consolidation, and have, by and through these respective boards of directors, agreed so to do, upon the terms and conditions hereinafter mentioned and contained:

160 Now, therefore, this agreement, made by and between the corporations above named under and by virtue of legal authority so to do, and which is expressly conferred by the above-named act of the

legislature of Ohio, witnesseth, that said Cleveland and Toledo Railroad Company and the said Lake Shore Railway Company do agree, each with the other, that the said companies shall be consolidated into and form one corporation, which shall have for its name and style "The Lake Shore Railway Company." And in pursuance of the said act of the legislature of Ohio, the said parties thereto do hereby prescribe the following terms and conditions of and for the said consolidation, and do respectively agree thereto, and to the mode of carrying the same into effect as herein provided:

ARTICLE I. The directors of said corporation, as consolidated
161 under the name of the Lake Shore Railway Company, shall be in number thirteen.

ARTICLE II. The first election of directors of the Lake Shore Railway Company shall be held at the principal office now jointly occupied by the parties hereto, in the city of Cleveland, in the State of Ohio, on the 19th day of March, A. D. 1869, between the hours of two and four p. m. All stockholders in either of the above-named companies entitled to vote at any election of directors in either of said companies shall have the right to vote at said election, in person or by proxy, and shall be severally entitled to one vote for each and every share of stock held or owned by such stockholder in either of said companies. The thirteen persons being legally qualified, receiving the highest number of votes at the said election, shall be the first directors of the said
162 Lake Shore Railway Company, and shall hold their office until their successors are elected and qualified according to law.

ARTICLE III. The capital stock of the said Lake Shore Railway Company shall be fifteen millions of dollars, to be divided into three hundred thousand shares of fifty dollars each; and whereas the shares in the said two companies were, by and under the provisions of a lease and agreement between the parties hereto, of date October 8th, A. D. 1867, equalized in value, it is hereby agreed that each share in the one company is and shall be taken to be of equal value with each share in the other company, and that each and every holder of shares in either of said companies shall, after having obtained such increase in the number of his shares as he may be entitled to under the provisions
163 of said lease and agreement, and under the action and authority of the said company issuing said shares, be entitled to receive, on surrender of his certificate for the shares so held by him, an equal number of shares in said Lake Shore Railway Company; and said company shall, without delay, issue such certificates on demand of any stockholders.

ARTICLE IV. After the consolidation herein provided for is perfected, and after said first election, no stockholders in either of the companies parties hereto shall be permitted to vote at any meeting of the stockholders of said consolidated company until they shall have surrendered their certificates of stock in company and received in exchange certificates of stock in the said consolidated company.

ARTICLE V. All and singular the rights, franchises, privileges, real estate, depot-grounds, rights of way, road-bed, iron rails, rolling-stock, money, choses in action, accounts in property of every descrip-
164 tion, name, and nature, belonging to either of said companies, and the right, title, equity, or interest which either may have, present, future, or contingent, in any property or credit, with all appurtenances, shall, upon the ratification of these articles and the election of the first board of directors of the Lake Shore Railway Company, as herein by law provided for, be held, owned, and controlled by the said Lake Shore

Railway Company, its successors and assigns, as fully and completely, to all intents and purposes, as the said respective parties hereto do or can now hold, own, use, or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Lake Shore Railway Company.

ARTICLE VI. All just debts, guaranties, liabilities, and obligations, existing against either of the said companies, parties hereto, at the time of the taking effect of this consolidation, shall be and are hereby as-
165 sumed, and the same shall be provided for, paid, and discharged by the said consolidated company; and all contracts and agreements existing between either of the parties hereto and other companies, or with any person or persons, shall be carried out and performed by the said consolidated company.

ARTICLE VII. All books, vouchers, records, instruments of title, cash, evidence of debt, contracts, and other documents pertaining to the business or property of the said companies, parties hereto, shall, without delay, be delivered to the proper officers of the consolidated company, and the said books, records, and papers shall be deemed and taken, as far as necessary, as the records and books of said consolidated company, and said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if
166 the said corporation had remained in the office of the original companies.

ARTICLE VIII. It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said companies, parties hereto, at a meeting thereof called separately, for the purpose of taking the same into consideration, and ratifying or rejecting the same. Due notice of the time and place of said meeting, and the object thereof, shall be given, as provided by law. The time of said meeting of the stockholders of the Cleveland and Toledo Railroad Company shall be on the 19th day of March, A. D. 1869, between the hours of 10 a. m. and 2 p. m., and the place the office of the Lake Shore Railway Company, in the city of Cleveland. The time of such meeting of the stockholders of the Lake Shore Railway Company shall be on the 19th day of March, A. D. 1869, between the hours of 10 a. m. and 2 p. m., and the place the office of the company in the city of Cleveland.

ARTICLE IX. All elections for directors of said consolidated company, after the first election of directors herein provided for, shall take place at such time and place and in such manner as may be prescribed by the by-laws of the board of directors of the consolidated company.

In witness whereof said Cleveland and Toledo and Lake-Shore Railway Companies have caused the respective corporate seals to be hereunto affixed, and these presents to be subscribed by their presidents and secretaries, in the city of Cleveland, the eleventh day of February, A. D. 1869.

[SEAL.] CLEVELAND & TOLEDO R. RD. CO.,
By GEO. B. ELY, *President.*

Attest:
GEO. B. ELY, *Secretary.*

[SEAL.] LAKE SHORE RAILWAY COMPANY,
By J. H. DEVEREAUX, *V. President.*

Attest:
WM. CROWELL, *Sec'y.*

[20-cent int.-rev. stamp.]

legislature of Ohio, witnesseth, that said Cleveland and Toledo Railroad Company and the said Lake Shore Railway Company do agree, each with the other, that the said companies shall be consolidated into and form one corporation, which shall have for its name and style "The Lake Shore Railway Company." And in pursuance of the said act of the legislature of Ohio, the said parties thereto do hereby prescribe the following terms and conditions of and for the said consolidation, and do respectively agree thereto, and to the mode of carrying the same into effect as herein provided:

ARTICLE I. The directors of said corporation, as consolidated
161 under the name of the Lake Shore Railway Company, shall be in number thirteen.

ARTICLE II. The first election of directors of the Lake Shore Railway Company shall be held at the principal office now jointly occupied by the parties hereto, in the city of Cleveland, in the State of Ohio, on the 19th day of March, A. D. 1869, between the hours of two and four p. m. All stockholders in either of the above-named companies entitled to vote at any election of directors in either of said companies shall have the right to vote at said election, in person or by proxy, and shall be severally entitled to one vote for each and every share of stock held or owned by such stockholder in either of said companies. The thirteen persons being legally qualified, receiving the highest number of votes at the said election, shall be the first directors of the said
162 Lake Shore Railway Company, and shall hold their office until their successors are elected and qualified according to law.

ARTICLE III. The capital stock of the said Lake Shore Railway Company shall be fifteen millions of dollars, to be divided into three hundred thousand shares of fifty dollars each; and whereas the shares in the said two companies were, by and under the provisions of a lease and agreement between the parties hereto, of date October 8th, A. D. 1867, equalized in value, it is hereby agreed that each share in the one company is and shall be taken to be of equal value with each share in the other company, and that each and every holder of shares in either of said companies shall, after having obtained such increase in the number of his shares as he may be entitled to under the provisions
163 of said lease and agreement, and under the action and authority of the said company issuing said shares, be entitled to receive, on surrender of his certificate for the shares so held by him, an equal number of shares in said Lake Shore Railway Company; and said company shall, without delay, issue such certificates on demand of any stockholders.

ARTICLE IV. After the consolidation herein provided for is perfected, and after said first election, no stockholders in either of the companies parties hereto shall be permitted to vote at any meeting of the stockholders of said consolidated company until they shall have surrendered their certificates of stock in company and received in exchange certificates of stock in the said consolidated company.

ARTICLE V. All and singular the rights, franchises, privileges, real estate, depot-grounds, rights of way, road-bed, iron rails, rolling-stock, money, choses in action, accounts in property of every descrip-
164 tion, name, and nature, belonging to either of said companies, and the right, title, equity, or interest which either may have, present, future, or contingent, in any property or credit, with all appurtenances, shall, upon the ratification of these articles and the election of the first board of directors of the Lake Shore Railway Company, as herein by law provided for, be held, owned, and controlled by the said Lake Shore

Railway Company, its successors and assigns, as fully and completely, to all intents and purposes, as the said respective parties hereto do or can now hold, own, use, or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Lake Shore Railway Company.

ARTICLE VI. All just debts, guaranties, liabilities, and obligations, existing against either of the said companies, parties hereto, at the time of the taking effect of this consolidation, shall be and are hereby assumed, and the same shall be provided for, paid, and discharged by the said consolidated company; and all contracts and agreements existing between either of the parties hereto and other companies, or with any person or persons, shall be carried out and performed by the said consolidated company.

ARTICLE VII. All books, vouchers, records, instruments of title, cash, evidence of debt, contracts, and other documents pertaining to the business or property of the said companies, parties hereto, shall, without delay, be delivered to the proper officers of the consolidated company, and the said books, records, and papers shall be deemed and taken, as far as necessary, as the records and books of said consolidated company, and said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if the said corporation had remained in the office of the original companies.

ARTICLE VIII. It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said companies, parties hereto, at a meeting thereof called seperately, for the purpose of taking the same into consideration, and ratifying or rejecting the same. Due notice of the time and place of said meeting, and the object thereof, shall be given, as provided by law. The time of said meeting of the stockholders of the Cleveland and Toledo Railroad Company shall be on the 19th day of March, A. D. 1869, between the hours of 10 a. m. and 2 p. m., and the place the office of the Lake Shore Railway Company, in the city of Cleveland. The time of such meeting of the stockholders of the Lake Shore Railway Company shall be on the 19th day of March, A. D. 1869, between the hours of 10 a. m. and 2 p. m., and the place the office of the company in the city of Cleveland.

ARTICLE IX. All elections for directors of said consolidated company, after the first election of directors herein provided for, shall take place at such time and place and in such manner as may be prescribed by the by-laws of the board of directors of the consolidated company.

In witness whereof said Cleveland and Toledo and Lake-Shore Railway Companies have caused the respective corporate seals to be hereunto affixed, and these presents to be subscribed by their presidents and secretaries, in the city of Cleveland, the eleventh day of February, A. D. 1869.

[SEAL.] CLEVELAND & TOLEDO R. RD. CO.,
By GEO. B. ELY, *President.*

Attest:
GEO. B. ELY, *Secretary.*

[SEAL.] LAKE SHORE RAILWAY COMPANY,
By J. H. DEVEREAUX, *V. President.*

Attest:
WM. CROWELL, *Sec'y.*

[20-cent int.-rev. stamp.]

OFFICE OF THE CLEVELAND AND
TOLEDO RAILROAD COMPANY,
168 *Cleveland, April 1st*, 1869.

I hereby certify that the foregoing agreement, hereto attached, entered into by and between the board of directors of this company with the board of directors of the Lake-Shore Railway Company, both corporations in the State of Ohio, was, on the 19th day of March, A. D. 1869, after more than thirty days' notice (a copy of which is hereto attached) given to each of the stockholders of this company whose places of residence were known, and deposited in the post-office at Cleveland, Ohio, and published in one of the newspapers in the city of Cleveland, in which city said corporation has its principal office of business, in the manner required by the statutes of Ohio in such case made and provided, was, on said day, at the meeting of the stockholders called under said notice, sanctioned by said stockholders by the
169 vote of more than two-thirds of all the stockholders of said corporation present at said meeting by proxy or in person; that the whole number of shares so represented was ninety-two thousand two hundred and sixty-seven, (92,267,) of which the whole number voted in favor of sanctioning the same and none against; and that the foregoing is an accurate duplicate of the said agreement, and that the same was executed by the president of this company under its corporate seal, and by virtue of a resolution of the board of directors authorizing the same.

In witness whereof the secretary of said corporation has hereunto set his hand and the seal of said company on the day and year aforesaid.

[SEAL.] WM. CROWELL,
Secretary C. & T. R. R.

[50-cent int.-rev. stamp.]

Notice.

OFFICE OF THE CLEVELAND &
TOLEDO RAILROAD COMPANY,
Cleveland, February 11th, 1869.

170 At a meeting of the board of directors this day, it was unanimously resolved that the contract for consolidating the capital stock of this company with that of the Lake-Shore Railway Company be approved; and it was ordered that a special meeting of the stockholders to ratify said contract of consolidation be held at the office of the company, in Cleveland, on Friday, the 19th day of March, 1869, between the hours of 10 a. m. and 2 p. m.

It was also ordered that in case of the ratification of said contract a meeting of the stockholders shall be held at the same place, between the hours of 2 and 4 p. m. of said 19th day of March, aforesaid, for the purpose of electing directors of such consolidated company. The transfer-books of the company will be closed on the 20th day of February, 1869, and opened on the 20th day of March, 1869. In case of your inability to attend the meeting in person, you will please sign the
171 annexed power of attorney, and forward the same to Geo. B. Ely, president, with instructions to vote for or against said proposition, as you may see fit.

WM. CROWELL,
Secretary.

OFFICE OF THE LAKE-SHORE RAILWAY COMPANY,
Cleveland, April 1st, 1869.

I hereby certify that the foregoing agreement hereunto attached, entered into by and between the board of directors of this company with the board of directors of the Cleveland and Toledo Railroad Company, both corporations in the State of Ohio, was on the 19th day of March, A. D. 1869, after more than thirty days' notice (a copy of which is hereunto attached) given to each of the stockholders of this company whose places of residence were known, and deposited in the post-office at Cleveland, Ohio, and published in one of the newspapers in the city of Cleveland, in which city said corporation has its principal office of business, in the manner required by the statute of Ohio in such case made and provided, was, on said day, at the meeting of the stockhold-
172 ers called under said notice, sanctioned by said stockholders by the vote of more than two-thirds of all the stockholders of said corporation present at said meeting, by proxy or in person. That the whole number of shares so represented was one hundred and thirty-two thousand and ninety-two shares, (132,092,) of which 131,438 shares voted in favor of sanctioning the same, and only 654 shares voted against the same. And that the foregoing is an accurate duplicate of the said agreement, and that the same was executed by the president of this company under its corporate seal and by virtue of a resolution of the board of directors authorizing the same.

In witness whereof the secretary of *of* this corporation has hereto set his hand and the seal of said company on the day and year aforesaid.

[SEAL.] GEO. B. ELY,
Sec'ty Lake Shore R'y Company.

[5-cent int. rev. stamp.]

STATE OF OHIO,
Cuyahoga County:

173 Before me, a notary public, appeared the Lake-Shore Railway Company, by Geo. B. Ely, its secretary, who acknowledged the signing and sealing of the foregoing instrument.

[SEAL.] WM. CROWELL, *Notary Public.*

Notice.

OFFICE OF THE LAKE-SHORE RAILWAY COMPANY,
Cleveland, February 11th, 1869.

At a meeting of the board of *of* directors this day it was unanimously resolved, that the contract for consolidating the capital stock of this company with that of the Cleveland and Toledo Railroad Company be approved, and it was ordered that a special meeting of the stockholders to ratify said contract of consolidation be held at the office of the company in Cleveland, on Friday, the 19th day of March, 1869, between the hours of 10 a. m. and 2 p. m. It was also ordered that, in case of the ratification of said contract, a meeting of the stockholders shall be held at the same place, between the hours of 2 and 4 p. m. of the
174 said 19th day of March aforesaid, for the purpose of electing directors of such consolidated company. The transfer-books of the company will be closed on the 20th day of February, 1869, and opened on the 20th day of March, 1869. In case of your inability to attend the meeting in person, you will please sign the annexed power of attorney, and forward the same to me with instruction to vote for or against said proposition, as you may see fit.

GEO. B. ELY,
Secretary.

THE STATE OF OHIO,
Office Secretary of State:

I, Isaac R. Sherwood, secretary of state of Ohio, do hereby certify that the foregoing is a true copy of articles of consolidation by and between the Cleveland and Toledo Railroad Company and the Lake-Shore Railway Company, forming the Lake-Shore Railway Company, filed in this office the 6th day of April, 1869.

In witness whereof I hereunto subscribe my name and affix the great seal of the State of Ohio this 19th day of May, A. D. 1872.

175 [SEAL.] ISAAC R. SHERWOOD,
Secretary of State.

EXHIBIT D.

Articles of agreement made and entered into this 6th day of April, A. D. 1869, by and between the Lake Shore Railway Company, party of the first part, and the Michigan Southern and Northern Indiana Railroad Company, party of the second part.

Whereas the said first party owns a line of railroad extending from the city of Erie, in the State of Pennsylvania, to the city of Toledo, in the State of Ohio, and the said second party owns lines of railroad extending from Chicago, in the State of Illinois, to said city of Toledo, with branches, which railroads constitute a continuous line of railroad from Erie to Chicago;

And whereas said companies are authorized by law to consolidate and become one corporation, and it is believed that such a consolidation will be beneficial to the stockholders of the two companies and to the public:

176 Now, therefore, this agreement witnesseth that the said Lake Shore Railway Company and the said Michigan Southern and Northern Indiana Railroad Company do agree, each with the other, that the said companies shall be consolidated into and form one corporation which shall have for its name and style the "Lake Shore and Michigan Southern Railway Company," and do prescribe the following terms and conditions for the said consolidation, and the mode of carrying the same into effect:

ARTICLE 1. The directors of said corporation so consolidated under the name of the Lake Shore and Michigan Southern Railway Company shall be in number thirteen, and the officers thereof shall consist of a president and one or more vice-presidents, a treasurer and secretary, and other necessary officers, all of whom shall be residents of the United States. The authorized capital stock of said consolidated company

177 shall be thirty millions of dollars. The amount of each share shall be one hundred dollars, and the number of shares three hundred thousand. The holder of shares in either of said companies shall be entitled to receive, on the surrender of his certificate for the shares so held by him, a certificate for an equal amount of stock in shares at par in said consolidated company, and said company shall, without delay, issue such certificates on demand of any such stockholder. Certificates for half shares may be issued to the holder who shall be entitled to receive dividends and vote on the same. The shares of the companies consolidated shall be deemed such in the new corporation entitling the holder thereof to vote and receive dividends according to their par value, until the consolidated company shall be ready to issue new shares therefor and shall have given thirty days'

notice thereof in a daily newspaper published in Buffalo, Cleveland, Chicago, and New York. And the officers and employees of the companies so consolidated shall continue to be officers and employees of said consolidated company until their successors are duly elected or appointed by the proper authorities of said new corporation.

ARTICLE 2. It is stipulated by the first party that the whole amount of its capital stock, certificates for the shares of which are now outstanding or in existance, amount at par to fifteen millions of dollars and no more. It is stipulated by the second party that the whole amount of its capital stock, certificates for the shares of which are now outstanding or in existance, amount, at par, to twelve millions one hundred and twenty-five thousand and six hundred dollars, and no more.

It is stipulated by the first party that the amount of its indebtedness in bonds issued or outstanding does not exceed the sum of six millions six hundred thousand dollars, and by the second party that the amount of its indebtedness in bonds issued or outstanding does not exceed the sum of eight millions eight hundred and seventy-six thousand five hundred and eighty dollars, and by each party with the other that the amount of its indebtedness and liabilities of every character, so far as known to its president, vice-president, or treasurer, is now fully disclosed and represented to the directors of the other party.

ARTICLE 3. All and singular the rights, franchises, privileges, real estate, depot-grounds, railroads held by lease, rights of way, road-bed, branches, iron rails, rolling-stock, money, choses in action, accounts, equities, stock, and property of every description, name, and nature, belonging to either of said companies, and the right, title, equity, or interests which either may have, present, future, or contingent, in any property or credit, with all appurtenances, shall, in whatever State the same may be situate, upon the ratification of these articles, and the election of the first board of directors of the said Lake Shore and Michigan Southern Railway Company, as herein by law provided for, be held, owned, and controlled by the said Lake Shore and Michigan Southern Railway Company, its successors and assigns, as fully and completely to all intents and purposes as the said respective parties hereto do or can now hold, own, use, or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in the said Lake Shore and Michigan Southern Railway Company.

ARTICLE 4. All just debts, guaranties, or liabilities and obligations existing against either of said companies, parties hereto, at the time of the taking effect of this consolidation, shall be and are hereby assumed, and the same shall be provided for, paid, and discharged by the said consolidated company, and all contracts and agreements existing between either of the parties hereto and other companies, or with any person or persons, shall be carried out and performed by the said consolidated company.

ARTICLE 5. All books, vouchers, records, instruments of title, cash, evidences of debt, contracts, and documents, pertaining to the business or property of the said companies, parties hereto, shall, without delay, be delivered to the proper officers of the consolidated company; and the said books, records, and papers shall be deemed and taken so far as necessary as the records and books of said consolidated company, and said books, vouchers, and papers shall be subject to the proper examination and inspection of all parties interested therein.

ARTICLE 6. The first election of directors of said consolidated company shall be held in the city of Cleveland on the second day of June,

A. D. 1869. All subsequent elections shall take place at such time and place and in such manner as may be prescribed by the by-laws of the board of directors of said consolidated company.

In witness whereof the said corporations have caused these presents to be signed by their respective presidents and sealed by their respective corporate seals this sixth day of April, A. D. 1869.

The Lake Shore Railway Company—
[L. S.] By J. H. DEVEREAUX,
President.

Attest:
GEO. B. ELY,
Secretary.

The Michigan Southern and Northern Indiana Railroad Co.—
[L. S.] By E. B. PHELPS,
President.

Attest:
D. P. BARLEYDT,
Secretary.

W. W. BOYNTON, *Judge.*

THE STATE OF OHIO,
Lorain County, ss:

I, W. N. Briggs, clerk of the court of common pleas in and for
183 the county of Lorain, do hereby certify that the above and foregoing is truly taken and correctly copied from the records of the proceedings of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at Elyria, in said county, this 4th day of March, A. D. 1874.
WM. N. BRIGGS, *Clerk.* [SEAL.]

And there was also indorsed upon the back of said writ when returned to said supreme court the following, to wit:

STATE OF OHIO,
Cuyahoga County, ss:

I, Wm. N. Briggs, clerk of the court of common pleas within and for said county and State, do hereby certify that I have returned herewith an authenticated transcript of the record and proceedings and all things touching the case of the State of Ohio against Joseph Sheilds as fully as the same may remain of record in said court.

Witness my hand and seal of said court this 4th day of May, 1874.
WM. N. BRIGGS, *Clerk.* [SEAL.]

Citation.

And on the said 2nd day of May, 1874, there was also issued
184 out of our said supreme court a citation in error in said case, and which citation was in the words and figures following, to wit:

THE STATE OF OHIO,
City of Columbus:

To the sheriff of Lorain County, greeting:

We command you to give notice to the State of Ohio, defendant in

error, that upon a petition filed by Joseph Sheilds, plaintiff in error, we have caused to be brought into our supreme court, by our writ of error, a judgment rendered in a certain action of indictment in the court of common pleas within and for said county, at the January term thereof, A. D. 1874, in favor of defendant in error and against plaintiff in error, together with the proceedings in and all things touching said action, and to cite the said defendant in error to appear before the judges of our said supreme court forthwith to show cause, if any there be, why the said judgment should not be reversed and speedy justice done to the parties in that behalf; and of this writ make legal service and due return.

185 Witness Rodney Foos, clerk of said supreme court, at Columbus, this 2nd day of May, 1874.

[SEAL.] RODNEY FOOS, *Clerk*,
By ORANGE S. FRAZER, *Deputy*.

Said citation was endorsed on the back thereof as follows: Supreme court of the State of Ohio. No. 561. Joseph Sheilds vs. The State of Ohio. Citation in error. Returnable forthwith.

Return of citation.

And afterwards, to wit, on the 8th day of May, 1874, said citation was returned by said sheriff to said supreme court, indorsed as follows:

THE STATE OF OHIO,
Lorain County, ss:

Served the defendant in error May 5th, 1874, by personally delivering to George P. Metcalf, the prosecuting attorney of Lorain County, a true copy of this writ.

R. E. BRAMAN,
Sheriff of Lorain County.

Service, 40; mileage, 20; copy, 35; record, 12; postage, 8; return, 25—$1.40.

Motion to take cause out of its order.

And afterwards, to wit, on the 9th day of May, 1874, there was filed in said case the following motion to take said cause out of its order, to wit:

JOSEPH SHEILDS
vs.
THE STATE OF OHIO.

Motion.

The State of Ohio, by the atty. general, move the court to take this cause out of its order, and assign the same for trial, there being a suspension of execution of the sentence, &c.

186 JOHN LITTLE, *Atty. Genl.*

And afterwards, at said December term, 1873, of said supreme court, to wit, on the 2nd day of June, 1874, the following order was made by said supreme court in said case, to wit:

Journal entry.

JOSEPH SHEILDS *vs.* THE STATE OF OHIO. } Motion to take cause No. 561, general docket, out of its order for hearing, &c.

Ordered that the motion be, and the same is hereby, granted.

And afterwards, at the December term, A. D. 1875, of said supreme court, to wit, on the 21st day of December, 1875, this cause having been submitted, the following judgment, orders, decrees, and entries and certificates were made in said cause by the said supreme court, to wit:

Journal entry.

JOSEPH SHEILDS *vs.* THE STATE OF OHIO. } Error to the court of common pleas of Lorain County, Ohio.

This cause came on to be heard upon the transcript of the record of the court of common pleas of Lorain County, and was argued by counsel. On consideration whereof it is ordered and adjudged by this
187 court that the judgment of the said court of common pleas be, and the same is hereby, affirmed, and that the defendant in error recover of the plaintiff in error its costs herein, taxed at $. It is further ordered that a special mandate be sent to the court of common pleas of Lorain County to carry this judgment into execution; and that a copy of this entry be certified to said court of common pleas for entry.

Whereupon, on motion of said plaintiff in error, this court order it to be certified and made part of the record in this case and of the above-mentioned judgment and entry of affirmance, that in the rendition of said judgment of affirmance it became and was material to the case to determine whether an act of the general assembly of the State of Ohio, passed April 25, 1875, entitled "An act to amend section thirteen of an act entitled 'An act to provide for the creation and regulation of incorporated companies in the State of Ohio,' passed May 1, 1852," (70 Ohio Laws, 161,) laws of binding force and validity against the Lake
188 Shore and Michigan Southern Railway Company, a corporation created and then existing under the laws of said State, facts and agreements referred to, and set forth in the bill of exceptions taken in said court of common pleas and made a part of the record in this case.

And this court order it to be further certified that said plaintiff in error claimed and asked this court to hold that said act, passed April 25, 1873, so far as it prohibited any corporation operating a railroad from charging more than three cents per mile for the transportation of passengers, is in violation of the contract rights of the said Lake Shore and Michigan Southern Railway Company, and is therefore repugnant to the Constitution of the United States and void as against said Lake Shore and Michigan Southern Railway Company on that part of its road chartered and constructed under "An act to incorporate the Junction Railroad Company," as stated in said bill of exceptions.

189 And this court order it to be further certified that said plaintiff in error claimed and asked this court to hold that said act, passed April 25th, 1873, is repugnant to the Constitution of the United States and void as to all the rights and franchises of the said Lake Shore and

Michigan Southern Railway Company acquired by said company before the passage of said act.

And this court order it to be further certified that this court decided and adjudged that said act, passed April 25, 1873, was not repugnant to the Constitution of the United States in either of the particulars it was claimed to be by said plaintiff in error; and decided and adjudged that said act was and is valid and of binding force in all respects upon said Lake Shore and Michigan Southern Railway Company; and thereupon affirmed the judgment of said court of common pleas, and
190 ordered a special mandate to carry said judgment into execution as is above shown.

And the court order it to be further certified that in the decision of this case, this court held and decided that the consolidation of April 6, 1869, as stated in said bill of exceptions, whereby said Lake Shore and Michigan Southern Railway Company was formed, was done in pursuance of "An act to authorize the consolidation of railroad companies in this State with railroad companies of States adjoining in certain cases, and to authorize railroad companies in this State to extend their roads into adjoining States," which act was passed by the general assembly of the State of Ohio, April 10, 1856. (53 Ohio Laws, 143, and Swan and Critchfield Statutes, 327.)

And it is further ordered by this court to be certified that the question of the validity of said act of the general assembly of the
191 State of Ohio, passed April 25, 1873, as against the Lake Shore and Michigan Southern Railway Company in the particulars mentioned as aforesaid, was drawn in question in the hearing and decision of this case as being repugnant to article 1, section 10, of the Constitution of the United States, prohibiting any State from passing any "law impairing the obligation of contracts," and that the decision of this court was in favor of the validity of said act as against the said Lake Shore and Michigan Southern Railway Company.

And it is hereby certified that this court is the highest court of law and equity in the State of Ohio in which a decision in this case can be had.

192 THE STATE OF OHIO,
Franklin County, ss:

I, Arnold Green, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing transcript of the record in the case of Joseph Sheilds against the State of Ohio is truly taken and correctly copied from the records of said court.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 7th day of February, A. D. 1876.

[SEAL.] ARNOLD GREEN,
Clerk of the Supreme Court of the State of Ohio.

193 *Petition for the allowance of a writ of error.*

In the Supreme Court of the United States.

JOSEPH SHIELDS, PLAINTIFF IN ERROR,
vs.
THE STATE OF OHIO, DEFENDANT IN ERROR.

To the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States:

Your petitioner, Joseph Shields, a citizen of the United States and of the State of Ohio, residing in said State, respectfully represents and

sets forth to your honor that at the January term, A. D. 1874, of the court of common pleas of Lorain County, in the State of Ohio, in a criminal indictment or prosecution, wherein the State of Ohio was plaintiff and the said Joseph Shields was defendant, a judgment was rendered by said court of common pleas in favor of said State of Ohio and against your petitioner, the said Shields, for a fine of twenty-five dollars and the costs of said prosecution, and an order was made that execution issue against him to collect said fine and costs, and your petitioner
194 caused a petition in error to be presented in the supreme court of the State of Ohio to reverse said judgment, but the same was at the December term of said court, A. D. 1875, affirmed by said supreme court.

Whereupon the said supreme court of Ohio certified in due form of law that in the rendition of said judgment it was material to the case to determine whether an act of the general assembly of the State of Ohio, passed April 25th, 1873, entitled "An act to amend section thirteen of an act entitled 'An act to provide for the creation and regulation of incorporated companies in the State of Ohio,' passed May 1st, 1852," (70 Ohio Laws, 161,) was of binding force and validity against the Lake Shore and Michigan Southern Railway Company, a corporation created and then existing under the laws of said State, facts and agreements referred to and set forth in the bill of exceptions taken in said court of common pleas, and made a part of the record in said case; and also further certified that said plaintiff in error claimed and asked the court to hold that said act, passed April 25th, 1873, so far as it prohibited any
195 corporation operating a railroad from charging more than three cents per mile for the transportation of passengers, is a violation of the contract rights of the said Lake Shore and Michigan Southern Railway Company and is therefore repugnant to the Constitution of the United States and void as against said Lake Shore and Michigan Southern Railway Company on that part of its road chartered and constructed under "An act to incorporate the Junction Railroad Company," as stated in said bill of exceptions. And also that said plaintiff in error claimed and asked this court to hold that said act passed April 25th, 1873, is repugnant to the Constitution of the United States and void as to all the rights and franchises of the said Lake Shore and Michigan Southern Railway Company, acquired by said company before the passage of said act. But said supreme court decided and adjudged that said act of April 25th, 1873, was not repugnant to the Constitution of the United States in either of the particulars it was claimed to be by said
196 plaintiff in error, and decided and adjudged that said act was and is valid and of binding force in all respects upon said Lake Shore and Michigan Southern Railway Company. And said court further certified that in the decision of the case the court held and decided that the consolidation of April 6th, 1869, as stated in said bill of exceptions, whereby said Lake Shore and Michigan Southern Railway Company was formed, was done in pursuance of "An act to authorize the consolidation of railroad companies in the State with railroad companies of States adjoining in certain cases, and to authorize railroad companies in this State to extend their roads into adjoining States," which act was passed by the general assembly of the State of Ohio, April 10th, 1856. (53 Ohio Laws, 143, and Swan and Critchfield Statutes, 327.)

And further certified that the question of the validity of said act of the general assembly of the State of Ohio, passed April 25th, 1873, as against the Lake Shore and Michigan Southern Railway Company in the particulars mentioned as aforesaid, was drawn in question

197 in the hearing and decision of this case as being repugnant to article 7, section 10, of the Constitution of the United States, prohibiting any State from passing any "law impairing the obligations of contracts," and that the decision of this court was in favor of the validity of said act as against the said Lake Shore and Michigan Southern Railway Company, and further certified that said supreme court is the highest court of law and equity in the State of Ohio, in which a decision in this case can be had.

Therefore your petitioner, on the record here presented, asks leave to have his writ of error, to the end that it may be determined by the judgment of the Supreme Court of the United States whether said act is not in conflict with the provisions of the Constitution of the United States, and that your petitioner may have other proper relief.

Petitioner prays further for a supersedeas, and that the amount of the bond may be fixed by your honor.

E. J. ESTEP,
Atty. for Plff. in Error.
JAMES MASON,
Atty. for Plff. in Error.

(Indorsed:) Joseph Shields, plaintiff in error, vs. The State of Ohio, defendant in error. Petition in error to the Supreme Court of the United States. , atty. for plaintiff in error.

198 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the [SEAL.] supreme court of the State of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Joseph Shields, plaintiff in error, and The State of Ohio, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the de-
199 cision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the twenty-third day of March, in the year of our Lord one thousand eight hundred and seventy-six.

Issued 23 March, 1876.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

200 The United States of America to the State of Ohio, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein Joseph Shields is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, this twenty-third day of March, in the year of our Lord one thousand eight hundred and seventy-six.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

201 On this thirteenth day of April, in the year of our Lord one thousand eight hundred and seventy-six, personally appeared Luther Day before me, the subscriber, clerk of the supreme court of the State of Ohio, and makes oath that he delivered a true copy of the within citation to Hon. John Little, attorney-general of the State of Ohio, on the thirteenth day of April, A. D. 1876.

LUTHER DAY.

Sworn to and subscribed the thirteenth day of April, A. D. 1876.

ARNOLD GREEN,
Clerk of Supreme Court of Ohio.

I accept service of the within on behalf of the State of Ohio.

JOHN LITTLE,
Atty. Genl.

COLUMBUS, O., *April* 13, '76.

202 Know all men by these presents that I, Henry B. Payne, of Cleveland, State of Ohio, am held and firmly bound unto the State of Ohio in the full and just sum of five hundred dollars, to be paid to the said State of Ohio, its certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents, sealed with my seal, and dated this day of March, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately at a supreme court of the State of Ohio, in a suit depending in said court between Joseph Shields, plaintiff in error, and the State of Ohio, defendant in error, a judgment was rendered against the said Joseph Shields, and the said Joseph Shields having obtained a

writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Ohio citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said Joseph Shields shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sgd.) H. B. PAYNE. [L. S.] [L. S.] [L. S.]

Sealed and delivered in presence of—
(Sgd.) JNO. G. NICOLAY.
(Sgd.) CHAS. B. BEALL.

Approved by—

203 *Assignment of error.*

Supreme Court of the United States.

JOSEPH SHIELDS, PLAINTIFF IN ERROR,
vs.
THE STATE OF OHIO, DEFENDANT IN ERROR.

And now comes the said Joseph Shields and shows to the court here that at the January term, A. D. 1874, of the court of common pleas of Lorain County, in the State of Ohio, in a certain criminal prosecution in behalf of the State of Ohio against him, a judgment was rendered in favor of said State against him for a fine amounting to the sum of twenty-five dollars, and that at the December term, A. D. 1875, of the supreme court of the State of Ohio (which is the highest court of law and equity in said State) said judgment was by said supreme court of Ohio affirmed, all of which more fully appears by a transcript of the record in said case herewith filed, and said Shields says that in the rendering said judgment error intervened to his prejudice, as will appear by said record, and that among the error so intervening are the following, to wit:

204 1st. The act passed by the general assembly of the State of Ohio, April 25th, 1873, entitled "An act to amend section thirteen of an act entitled 'An act to provide for the creation and regulation of incorporated companies in the State of Ohio,'" passed May 1, 1852, (70 Ohio Laws, 161,) which is the foundation of said judgment in so far as it prohibits any corporation from charging more than three cents per mile for the transportation of passengers, is in violation of the contract-rights of the Lake Shore and Michigan Southern Railway Company on that part of its road chartered and constructed under "An act to incorporate the Junction Railroad Company," as stated in said bill of exceptions.

2. That said supreme court of Ohio erred in sustaining and asserting the constitutionality of said act of the general assembly of Ohio in its application to and effect upon the said railway company and upon the acts and rights of plaintiff in error in the case before it.

3. That other errors apparent upon the record of the case.

205 4. That said supreme court affirmed said judgment against the plaintiff in error.

E. J. ESTEP,
JAS. MASON,
Attorneys for Plaintiff in Error.

(Indorsed:) Joseph Shields, plaintiff in error, vs. The State of Ohio, defendant in error. Assignment of error. To the Supreme Court of the United States. , atty. for plaintiff in error.

(Indorsement on cover:) No. 638. Joseph Shields, plaintiff in error, vs. The State of Ohio. Ohio sup. court. Filed 1st May, 1876.

(Indorsed:) Joseph Shields, plaintiff in error, vs. The State of Ohio, defendant in error. Assignment of error. To the Supreme Court of the United States. , atty. for plaintiff in error.

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In the Supreme Court of the United States.

JOSEPH SHIELDS,
vs.
THE STATE OF OHIO.

REPLY TO THE ARGUMENT OF MESSRS. SHELLABARGER AND WILSON.

JAMES MASON,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

JOSEPH SHIELDS,

vs.

THE STATE OF OHIO.

REPLY TO THE ARGUMENT OF MESSRS. SHELLABARGER AND WILSON.

In reply to some of the positions taken by the learned counsel for defendant in error, I invite attention to the following questions:

1st. Did a consolidation under the Act of 1851 work a dissolution of the original company?

2nd. Was the provision made by the Legislature of Ohio for vesting in the Consolidated Company the franchise before possessed by the original Company of such nature and made on such terms and condition that it was in fact and in law a surrender of all the franchises of the old and a creation of a new corporation with all its corporate franchises granted to it by and derived from the Legislature which authorized the consolidation?

1. That such a dissolution of the old and creation of the new has been held to result from consolidations of two or more Railway Companies is not denied, but as was said by Mr. Justice Strong, in Central R. R. Co. vs. Georgia, 2 Otto 92 U. S. Rep. page 671, "We find no case decided in this Country where the question directly arose or was necessarily determined".

Again such consolidation "does not necessarily imply a surrender of all the old charters". It also "leaves open the question whether the consolidation is the creation of a *new* company".

As remarked in the same opinion page 670, "Whether such be the effect or not, must depend upon the statute under which the consolidation takes place, and of the *intention* therein manifested."

To ascertain the intention of the Legislature of Ohio I request attention to its legislation in the matter of consolidation of Railroads, all which is contained in four acts, and in so far as pertains to the question before the Court is in one or two sections of each Act.

1st. The Act of 1852, Section 21. See Swan and Critchfield's Statutes page 280. Wrights' Ohio Railway Rep. page 45. The Act authorizes Railroad Companies organized under the general Railroad Act of 1852, to consolidate, and the effect of such consolidation is the transfer to the new or consolidated Company of all the franchises of each of the original Companies granted under the general Act, (which is subject to repeal or alteration under the Constitution of 1851), "and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this Act."

2nd. The Act of March 3, 1851, entitled, an Act relating to Railroad Companies.

See 1 Wrights' Ohio R. Rep. page 24, sections 1 and 3, and pages 7 and 8 on the Record.

This Act was passed before the Constitution of 1851, it pertains to Rail Road Corporations under special charters, and is still in force.

3rd. The Act of 1856, entitled, an Act to authorize the consolidation of Railroad Companies in this State, with Railroad Companies of States adjoining. See Wrights' Ohio R. R. Reports, page 63.

(See page 7 of my first brief.)

On the 6th of May, 1869, the Legislature passed an act amendatory to the first section of the Act of 1856 (see Wright's Ohio Rep., p. 133); the section is as follows:

"SEC. 1. That, whenever the lines of railroad of any railroad companies in this State, or any portion of such lines, have been or may be constructed so as to admit the passage of burthen or passenger cars over any two or more of such roads continuously, without break or interruption, such companies are hereby authorized to consolidate themselves into a single corporation; and that it shall be lawful for any railroad company in this State, organized under the general or any special law, or which may hereafter be organized in this State, and whose line of railroad shall be made or in progress of construction to the boundary line of the State, or to any points either in or out of this State, to consolidate its capital stock with the capital stock of any railroad in an adjoining State, the line of whose road has been made or is in process of construction to the same point, and where the several roads

so unite as to form a continuous line for the passage of cars; provided that roads running to the bank of any river which is not bridged, shall be held to be continuous under this Act."

"SEC. 2. That the original first section of this Act, named in the first section of this Act, and sections twenty-one, twenty-two and twenty-three of the act to provide for the creation and regulation of incorporated companies in the State of Ohio, passed May 1st, 1852, be and the same is hereby repealed."

The sections repealed, so far as pertinent to the questions under consideration, are as follows (see Wright's Rep., 44 and 45):

"SEC. XXI. The directors of said two or more corporations may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of the directors thereof, which shall not exceed thirteen; the time and place of holding the first election of directors; the number of the shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations who refuse to convert their stock into the stock of such new corporation; with such other details as they shall deem necessary to perfect such consolidation of such corporations; and such new corporation shall possess all the powers, rights and franchises

conferred upon such said two or more corporations, and shall be subject to all the restrictions and perform all the duties imposed by the provisions of this Act: Provided that all stockholders in either of such corporations, who shall refuse to convert their stock into the stock of such new corporation shall be paid at least par value for each of the shares so held by them, if they shall so require, previous to said consolidation being consumated."

"SEC. XXII. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterparts thereof in the office of the Secretary of State, the said two or more corporations mentioned or referred to in the said first section, shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein."

"SEC. XXIII. Upon the election of the first Board of Directors of the corporation created by the agreement in the twenty-first section of the Act mentioned, and by the provisions of this Act, all and singular, the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular, their rights and interests in and to every species of property, real, personal and mixed, and things in action shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the right of way and all other rights of property in the same manner, and to the same extent as if the said two or more corporations, parties to such agreement,

should have continued to retain the title and transact the business of such corporations; and the titles and the real estate acquired by either of said two or more corporations, shall not be deemed to revert or be impaired by means of anything in this Act contained."

This Legislation would seem to indicate very clearly that the Legislature both in April, 1856, and in May, 1869, intended to provide terms and conditions under which companies formed under special charters might consolidate without coming under the Act of 1852, and under which they could preserve the privilege and franchises which they held under the special charters. Its refusal or neglect to repeal the Act of March 3d, 1851, when thus frequently legislating on the matter of consolidating railroads would seem to leave no doubt of *its intention* to permit companies created under special charters or prior to the consolidation of 1851 to preserve existing privileges and franchises after consolidation.

What motive or object could have existed to induce the repeal of the consolidation provision of the Act of 1852, and to confine the authority to consolidate railroads, under the Acts of 1851, or 1856, as amended by the Act of 1869, except to permit any railroad companies in the State to consolidate and at the same time preserve their respective franchises and privileges without coming under the provisions of the general Act of 1852, unless created under that Act and deriving their rights and privileges from it; in which case, if consolidated under the Act of 1856, they would necessarily continue after consolidation to be controlled by the provisions of the Act under which they were respectively created?

Compare what is said and permitted under the Act of 1856 with what was said and permitted in case of the consolidation of the Georgia railroads referred to and passed upon in 2 Otto, p. 666:

1st. The Georgia Railroad is authorized to unite and consolidate the stocks.

The same in the Act of 1856:

2d. A union and amalgamation of *all* the rights, privileges and franchises is in both cases provided for.

3d. The name is fixed in the Georgia case. In the Act of 1856 it is not.

4th. The contracts, debts and obligations are perpetuated in both.

5th. In both cases two-thirds of the stockholders must assent.

6th. In both cases a certificate must be filed with the Secretary of State.

The statute of Ohio speaks of the cons
pany as a *new* corporation. It included tl
both the old companies; covered the terri
was jointly owned by the stockholders of both; perpetuated the contracts and obligations of both, imposing them on the consoliated company; combining two corporations into one in the same sense and manner in every particular as in the case before the Court; and made the two to become one.

It would tax ingenuity to attempt to point out wherein the L. S. & M. S. Co. has become by reason of consolidation a *new* corporation in any other or different sense than the Georgia Company became a new corporation by reason of the consolidation of the two original companies.

To illustrate what the Ohio Legislature intended should be the effect of the union by consolidation of two or more Railroad Companies, in addition to the intent indicated in the Acts already referred to. I call attention to the special Acts under which the Cleveland and Toledo Company was formed. See Wright pages 218–219, section 5 and 12.

Section 5 appears on page 15, and Section 12 on page 18 of the Record.

The Cleveland and Toledo Company was in one sense a new Company, but not in any other or different sense than was the Georgia Company a new Company. Different powers and franchises were to be possessed by the consolidated Company from those which either Company had acted under or held under its own charter by extracting from each such as the consolidated or new Company were to exercise. The idea certainly could not have been conceived, that this union was intended to be a surrender of the charters of both Companies, and the acceptance of a new charter. "It assumes corporate life already existing." Such power to unite two companies could not be conferred after the adoption of the new Constitution, but that in the General Acts which were subsequently passed, the Legislature continued to assume the corporate life of each company as continuing to exist, and that the consolidated company should be a union of existing life, and not its extinction and absolute *recreation*, I submit, is an obvious inference.

In the language of this Court in 2 Otto 673, "The gift of new powers to a corporation has never been thought to destroy its identity, much less to change it to a new being."

I refer to the case of the Philadelphia and Wilmington R. R. Co. *vs.* the State of Maryland, 10 Howard 376. Three, if not more R. R. companies chartered by and located in 3 States had been consolidated C. J. Taney speaks of the consolidated company as a "new corporation;" again as "the new company." He says, "Now, as these companies held their corporate privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed, should in like manner be held and possessed by the new company, to the extent of the roads they had respectively occupied before the union; that it should stand in their place, and possess the power, rights and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. And this intention is made still more evident by the fourth section of the law, which makes the new corporation responsible for the contracts, debts, obligations, engagements and liabilities at law or in equity of the several companies, and declares that it shall hold and be entitled to all the estate, real, personal and mixed, choses in action, etc. belonging to or due to the several companies."

The consolidation was the same in its character with those before the Court. Can it be supposed that it occurred to C. J. Taney that this consolidated company came into being by the surrender and extinction of the original charters, and a supposed new grant of life from the Legislature of the three States respectively?

In this connection I invite attention to another consequence which must result from maintaining the doctrine of this decision as held by the Supreme Court of Ohio,

and one which may still further serve to illustrate its effect upon the *vested* rights of another class of persons interested in the property and franchises of both the original consolidated company in companies.

Assume that this Ohio Company prior to this consolidation had mortgaged to a large amount its line of railroad. The property mortgaged would depend for its value chiefly upon the franchises pertaining to it.

When it was executed, and when the bonds were purchased by the holders, the franchise was irrevocable, permanent and beyond Legislative control. The laws of the State expressly authorized the mortgage. See 1 Swan & Critchfield, 322. Such mortgage was a pledge of the franchise of the corporation for the transportation of "persons and property, also of all its property connected with its railroad, and the use of its franchises whether real or personal then held or to be subsequently acquired." As is expressed by the Supreme Court of Ohio in the case of Coe *vs.* the C. P. & I. R. R. Co., 10 Ohio State Rep., 390. After the holder had purchased his bonds on the faith of this security, the most valuable portion of which was perhaps the franchise of the company permitting it to charge reasonable tolls, which franchise was ~~this~~ irrevocable two-thirds of the stockholders, without the knowledge or consent of the bondholders, avail themselves of an Act passed subsequent to this mortgage, consolidate their company with other companies, and, according to the theory of this decision, surrender the franchises which had been mortgaged to the Legislature and in their place accept franchises which can be repealed or changed by the Legislature at its pleasure! It is unnecessary to point out the

obvious consequences which could result from such construction of this Legislation. It might destroy the security which the bondholder held. The conclusion would seem most clear that by this construction of these Legislative Acts, vested rights of not only the companies in the other States which were invited into this consolidation or partnership, the rights of the minority of stockholders, who should refuse to join in the agreement of consolidation, but also the security and rights of the creditors of the original company would be liable to be sacrificed. These considerations must utterly repel the idea that the Legislature intended that a consolidation of railroad companies should be wrought out through a dissolution of the corporations and surrender of their charters and acceptance of franchises which are temporary and revocable at the discretion of the Legislature.

Upon the question of the intention of the Legislature of Ohio as to the surrender or continued existence of the franchises of the original companies which became consolidated, further light may be thrown by reference to the principle decided in the case of Ohio & Mississippi Railroad Co. *vs.* Wheeler, made in 1861, 1 Black, 297.

"The legal entity or person which exists by force of law can have no existence beyond the limits of the State or sovereignty which brings it into life, and endues it with faculties and powers. "Neither State could confer on it a corporate existence in the other." "In that case the Indiana & Ohio Companies were held in legal contemplation distinct and separate corporate bodies."

Inasmuch as the Ohio corporation could not be, under the legal principle here established by this Court,

absolutely and in all respects incorporated with the corporations of other States, to what end should it surrender its corporate existence in order to be recreated as simply an Ohio corporation?

The consolidated line of railroads situated in six States is more properly to be considered as a perpetual partnership of several corporations or legal entities than as one corporation.

See 28 Conn. 299, Bishop *vs.* Brainard.

In regard to the effect of a consolidation of a Connecticut Railroad with a Rhode Island Railroad, the Court say:

"In regard to the effect of such a consolidation it does not necessarily follow that it would extinguish to all intents and purposes the existence of these corporations. It is possible for them still to subsist for certain purposes, notwithstanding they should be thus amalgamated."

Upon the same question the Supreme Court of Illinois in the case of R. & M. R. R. Co. *vs.* F. L & T. Co., 49 Illinois, p. 351, use the following language:

"In dismissing this question of consolidation, it may be remarked that where continuous lines of roads, passing through different States, are consolidated by Legislative authority, as we believe is not unfrequently the case, although the consolidated company must, from the very nature of a corporation, be regarded as a distinct entity in each State, yet the objects of consolidation would be very liable to be defeated, unless the entire line should be placed under one Board of Directors. The principle that a single corporation cannot be created by the joint Legislation of two States, while an irresistable inference from the established law in regard to corporate bodies, is

nevertheless a technical and abstract principle, and when adjoining States authorize consolidations, as in the present instance, and the consolidated lines are placed under a common board, with a common name and seal, such board will, naturally, act as if the consolidated lines made, be one company, and when their contracts assume that form, the Courts must, for the protection of the public and to enforce good faith, hold, as we have done is this case, that the contract is to be construed as made by the corporation of each State in which the subject matter of the corporation lie: *ut res mag is valeat quam pereat.*"

Upon the theory that these original corporations were dissolved by reason of their consolidation, which can be effected by a vote of two-thirds of the stock-holders, a principle, new to the elementary books, would seem to be recognized. Among the familiar modes by which a private corporation may be dissolved, one is by a surrender of its franchises.

Angel and Ames on Corporations, page 876.

"Sometimes, however, the Act under which the society is formed, prescribes the mode in which it may be dissolved; as by the consent, in writing, of five-sixths in value, of the members, or by the concurrence of three-fourths of the members present at a general meeting, in which case, it is hardly necessary to add, that a dissolution in either of the modes prescribed will be effected."

If the counsel has sustained his position that the franchise in question was *granted* by the Ohio Legislature to this company in 1869, and that it was not a transfer of a grant made to the original company, which the Ohio Legislature agreed should be transferred from that original

company when in full life and being, to the several companies, when united in one; which companies gave in return similar franchises, and further, that no right to continue to enjoy such franchise became vested in such other parties to the arrangement, the points of resemblance should be clearer than they seem now to be.

The case of Parker *vs.* Met R. C., 109 Mass. 506, which the counsel regard as exactly the one at bar, I also invite attention to.

If, in the case at bar, the Railroad Company was, in fact, created under the Act of 1852, the resemblauce would be more readily discerned. The following language of the Court is in harmony with several cases I have cited:

"It at least reserves to the Legislature the right to make any reasonable amendments, regulating the mode in which the franchise *granted*, shall be used and enjoyed, which do not defeat or essentially impair the object of the grant, or take away any rights or property which have become vested under a legitimate exercise of the powers granted."

In answer to the claims made by counsel for defendant that the question whether this consolidation results in a *new* corporation, does not depend upon general principles of law, but does depend simply and purely upon the construction of the Constitution and laws of Ohio. I submit one or two suggestions.

Why this question does not depend upon the same general principles of law involved in the cases of Venice *vs.* Murdock and the other cases referred to by the counsel, I am not able to discover, nor do I understand the counsel

as attempting to point out. The Legislature of Ohio has indicated, as I believe I may assume, a clear intention that by the consolidation of railroad companies in that State, the franchises of the original corporations, whether held under special charters, or under the general law, shall be deemed to be transferred and vested in such new corporation without further act or deed. Just as such franchises had been held by the original companies, and by as permanent and secure a title. Neither of the Acts by which this transfer is permitted makes any allusion to a surrender to the State of the franchises or privileges originally granted, or of a grant from the State to the new or consolidated company. But the Supreme Court of Ohio held that the effect of such consolidation would in effect amount to

1st. A surrender of the charter and a dissolution of the corporation, and,

2d. To a recreation of an entirely new corporation, deriving its being and all its rights from the Legislature. I submit that its decision was in no sense declaratory of local law. It was based upon general reasoning. The same position as taken by the counsel for defendant has been so often passed upon by the Court that there can be no occasion for protracted discussion.

In the cases of Central Railway *vs.* Georgia, and of Southwestern Railroad Co. *vs.* Georgia, referred to in the note page 676 of 2d Otto, the Supreme Court of the State of Georgia gave the same effect to the consolidation Acts of Georgia as did the Supreme Court of Ohio to the Act in question. But its construction of the Act in question, and of its operation under the Constitution of the State of

Georgia, was overruled by the Supreme Court of the United States. The Lake Shore & Michigan Southern Railway passes into six States. The same question which was passed upon by the Supreme Court of Ohio might well arise affecting this same consolidated company in each of these States. Should the State Courts differ, an extraordinary condition of things would be found to exist if this Court should consider itself bound by the holding of the State Courts on the question involved.

The fact should not be overlooked that the original corporations chartered by each one of these six States, which have by consolidation entered into this company, and their respective stockholders are interested in the question involved in this case. If it be true that the Legislature of Ohio has power to annul or destroy the franchises which pertained to the corporations of that State, which form so important a portion of this extensive line of railroad, and thus break up and destroy the connected and continuous lines, it is a power which these parties in the other States never could have inferred from the terms of the Legislative Acts in question, and a great wrong might result to those corporations and to their stockholders by withdrawing from the line franchises they had the right to regard as permanent and beyond Legislative control.

Upon further questions as to the legal consequences to the railway company, by reason of the fact that two of the original companies availed themselves of the consolidation Act of 1856, I add but few suggestions to those con-

tained in my first brief. In that brief the 2d section of article 1 is not specifically referred to.

It is, "no special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the General Assembly."

Wherein this restriction is any broader than that expressed in Sections 1 and 2 of Article XIII, as affecting the question before the Court, does not appear to me.

If this consolidated company is to all intents and purposes the creation of the Act of 1856, it must come as clearly under Section 2 of Article XIII as under Section 2 of Article 1. In either case the right to alter, revoke, or repeal is reserved. But if my position before stated is tenable, the Ohio Legislature neither expressed nor intended a grant from itself of these franchises, but permitted under a general, not a special law, the union or consolidation of previously existing franchises, no special privileges or immunities were granted by or emanated from it.

With the decisions cited by the counsel as to the effect of a reservation of the right to alter or repeal Acts of incorporation, I have no controversy. The language of the Court, in the case cited from 104, Massachusetts 451 is in harmony with cases cited in my first brief. After remarking upon the diversity of judicial opinion upon the extent of the power reserved, etc., the Court say "that it at least reserved the authority to make any alteration or amendment in a charter granted subject to it that will not defeat or substantially impair the object of the grant or any rights which have vested under it, and that the Legislature may deem necessary to secure either

that object or other public or private rights."

If the existing laws of Ohio authorize the transfer of these franchises to a company to be comprised of three or more Railway Companies, located in its own and in five other states, in terms plainly indicating that the new or consolidated company should hold them by the same title and in the same manner as then held by the original company, with which they were invited to unite their respective franchises and interests; corresponding franchises and privileges at the same time being ceded by the original companies of the other States for the common benefit of the line, it would seem that by such consolidation a right to these franchises and to their continued enjoyment had become *vested*.

In answer to the position taken by counsel for defendant in error, that independently of the Constitution of 1851, this Railway Company is bound by the provisions of the Act of April 25, 1873, I submit a brief reply.

It will not be denied that prior to the Constitution of 1851, the Legislature could confer upon the company to be consolidated under section 12 of the charter of the Toledo, Norwalk and C. R. R. Co. the right to the special franchises of either of the original companies. That, whether in view of the special authority conferred by section 5 of the charter of the the T., N. & C. R. R. Co., and section 12 above referred to, it became necessary for these Companies to invoke to any extent the provisions of the Consolidation Act of March 3, 1851, or not, yet if the Legislature clearly prescribed what franchises the new

company should possess, such special provisions must control, and that it will not be subject to "all the restrictions of the Act," if it was the evident intent of the Legislature that it should not be.

I submit that when these two corporations did consolidate in 1853, availing themselves of the privileges and power conferred in and by said 12th section, and thus formed the Cleveland and Toledo Rail Road Company, it was made up specially of sections 9, 11, 15 and 17 of the charter of the Junction Company, and of such special rights as belonged to the Toledo, Norwalk and Cleveland Rail Road Company, and *generally* of such rights, privileges and franchises as were conferred by the Act of February, 1848, as were not inconsistent with the rights thus specially conferred.

The Legislature did not *intend* to reserve the power to reduce the tolls of the Cleveland and Toledo Rail Road Company which it had reserved in its charter to the Junction Company in section 22. In section 12 it, in special terms, conferred the privilege, and it not only did not couple with it the liability to reduction, but by omitting section 22 from the provisions of the Junction Charter which it incorporated in the charter of the new company, unmistakably indicated its intention that it should not be liable to the reduction to which the Junction Company was liable.

But it is claimed in behalf of the State that inasmuch as no authority is conferred upon the Junction Company by any provision in its charter to consolidate with another company, it must from necessity have invoked the power conferred by the General Act of March 3, 1851. And

that the consolidation permitted by that Act must necessarily engraft upon the consolidated company the restrictions which had been imposed upon each of the original companies, and that therefore the restriction contained in section 22 of the Junction Charter is from necessity imposed upon the Cleveland and Toledo Company. To sustain this position it must be assumed that the special rights sought to be conferred upon this expected consolidated company by section 12 before mentioned are nugatory. It will hardly be claimed that this amendment to the charter of the Toledo, Norwalk and Cleveland Railroad Company was repealed by this General Act of March, 1851. The intention of the Legislature is clearly manifest. It contemplated either that these two companies had by the powers then conferred and those previously acquired, the right to consolidate, or that such right would thereafter be conferred upon the Junction Company. And when such consolidation should be effected, it plainly prescribed just what the franchises of the consolidated company should be.

The Legislature had the power to confer upon the company thus to be created these special rights, although the enabling power on the part of one of them to consolidate may have been derived from a General Law afterward enacted, yet it would seem certain that the special rights conferred upon this particular consolidated company were not repealed. It was derived from an amendment to the charters of the Toledo, Norwalk and Cleveland Railroad Company, which amendment was made by a special Act before the Constitution of 1851, and was carried into the Cleveland and Toledo Company as a part of the franchise

of one of the original companies, and it is clear that full effect can not be given to section 12 of the Act amending the charter of the Toledo, Norwalk and Cleveland Railroad Company, and at the same time engraft upon it restrictions imposed upon the Junction Company by its original charter, intended to be explicitly repealed in the event of this consolidation.

A different question is presented in the fact that the laws applicable to the Toledo, Norwalk and Cleveland Railroad Company, and the Acts amendatory thereto, are in some respects different from what is specially provided in sections 9, 10, 11, 15 and 17 of the Junction charter to govern the consolidated company. The provisions of the General Act of February, 1848, are applicable to this charter *except* as controlled by the special provisions. We may safely assume that the rights and privileges thus specially conferred are not to be subverted or frittered away by any *general* inconsistent provisions which may be found in the Act. A general law will not be held to repeal "a particular and special law upon the same subject." (See 26 Texas Reports, 703, 27 U. S. Dig., 583.)

"It is contrary to the general rules of interpretation to hold that a statute conferring rights was repealed by inference." (12 N. Y., 306, Clarkson *vs.* Hudson Riv. R. R. Co., 2 Hill 238 Johnson *vs.* Burrell.)

But whether section 12 of the General Act of February, 1848 (see page 19 of Wright's Railway Rep.), is so inconsistent with section 11 aforesaid in the special charter aforesaid that both may not exist in the charter of the consolidated company, is a question for discussion. It is quite clear that the privileges conferred in section 12 of

the General Act are quite different from those conferred upon the company in section 11 of the special charter. In the one is a limit of three and one-half cents per mile, in the other "such rates of toll as the corporation may think reasonable." Every provision in section 12 is inconsistent with the rights conferred by section 11 in the charters, and as the consolidated company cannot be subject to both, it would seem logical to conclude that the one *specifically* conferred upon it as part of its charter with no limitation, is the franchise and right with which it is clothed.

But suppose that section 12 is applicable to and a restriction upon this consolidated company, and that the power therein reserved to reduce fares on the conditions therein contained authorizes the State, after the lapse of ten years, to withdraw from this company the right to fix its own reasonable fares as given to it in section 11. I submit that the Act of April 25th, 1873, was not an exercise of that conditional right.

By the explicit terms and conditions of the contract between the State and each corporation which was created under and in which was vested the rights, franchises and privileges specified in the Act of 1848, it was agreed that the corporation might receive the rates of fare and freight in section 12 specified, subject to the power of the General Assembly, after the lapse of ten years, to reduce them, *only* on the plain condition that the net profits of the company shall have averaged for the ten preceding years ten per centum per annum on its capital, and that the future probable profits shall not fall below said per centum.

That this is not an explicit contract has not yet been alleged on the part of the State; that its terms may be disregarded unless the charter has been surrendered or forfeited, has not as yet been assumed in behalf of the State before its judicial tribunal. But it is alleged by the State in this case that inasmuch as the Legislature has exercised the power to reduce fares, in this section provided for, the Court will presume in the absence of proof that the Legislature ascertained the existence of the facts which were the indispensible prerequisites to the exercise of such power. A moment's reflection will enable one to appreciate the magnitude and proportions of this presumption.

The Act embraces in its grasp every railroad in the State. Many of them were created under this Act of 1848, and some under special charters with specific rates of fare and freight limited, and with no power reserved to reduce them, and a large proportion under the Act of 1852 and its amendments. What the Court is presuming the Legislature must have found to be a fact, it is palpable to every one in case of most of the railroads, if not all of them, is a plain FICTION. But what presumption will the Court make in order to relieve the Legislature of the imputation of attempting to exercise a power in opposition to the expressed terms of its contracts in the case of those railroads specifically authorized in their charters to charge more than three per cent.? Take, for example, the Cleveland & Pittsburgh Railroad Company, which is permitted in its special charter to charge four cents per mile. The Legislature has not declared the existence of any such earnings, or pretended to predict any such earnings in

the future of any one of the roads, and there surely can be no reason to assume that it gravely found a most improbable and patent fiction to be a fact, except to save it from the imputation of a violation of the faith of the State. But since this presumed finding of this fiction to be fact will in no manner relieve it in the case of those companies existing under special charters, it would seem useless to attempt to relieve it from the imputation of an at least apparent violation of the contract of the State by presuming that it founded its arbitrary action in falsehood.

I submit that the more reasonable, as well as more respectful presumption, is either that the Legislature asserted the right to modify the franchises of all railway corporations in the State, or that the broad, and, in terms unlimited, provisions of the act of 1873, were intended to operate only upon all railroads which were organized under the Act of 1852 and its amendments, or those which by reason of acts done or changes made subsequent to the Constitution of 1851, have been in fact or in law brought under Legislative control.

In addition to the cases which I have cited, I also refer to the following case as containing a decision on one of the points pertinent to some of the questions which have been discussed.

In 16 Howard, 369, State Bank of Ohio *vs.* Knoop, Mr. Justice McLean says (p. 380):

"Every valuable privilege given by the charter, and which conduced to an *acceptance* of it, and an organization under it, is a contract which cannot be changed by the Legislation where the power to do so is not reserved in the charter."

On page 389 "There is no constitutional objection to the exercise of the power to make a binding contract by a State. It necessarily exists in its sovereignty, and it has been so held by all the courts in this country."

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